Central Law Journal.

ST. LOUIS, MO., AUGUST 17, 1906.

SOME FEATURES WHICH HAVE NOT BEEN CONSIDERED WITH REGARD TO THE SPRINGFIELD MOB.

We have read in our law journals many comments upon the crime of the Springfield, Mo., mob and the special finding of the grand jury. In the *Albany Law Journal*, Vol. 68, p. 180, we find the following taken from Tacoma (Wash.), *Ledger:* "No more telling commentary on the practice of lynching has ever been furnished than that offered in the findings of the special grand jury at Springfield, Mo., which recently concluded its investigation of the lynching of three negroes in that town on Easter eve. It will be recalled that a Mrs. Edwards reported that she had been attacked by two negroes after her white escort had been knocked down and beaten. Her story was doubted as soon as she told it, but nevertheless it furnished a pretext for the assembling of a large mob, which broke into the jail and took the two negroes specially accused and another one who was awaiting trial for a minor offense, to a public square two miles away, where they were strung up on an electric light pole and burned to death."

The editor of the JOURNAL happened to be in Springfield, Mo., the night of the disgraceful affair mentioned, and though not a witness to it, heard the accounts given of it by those who could be relied upon to give an intelligent and fair statement of the affair. It was bad enough at best in a community in which the intelligence of the people compares favorably with that of the people of Springfield, Ohio, where a scarcely less disgraceful disregard of the law was manifest. It is due the mob at Springfield, Mo., to correct some of the statements which have been repeatedly made and also to show that the act, which from such accounts as the above, might seem to have been the sole inciting cause of the lynching, was in reality a deeply seated racial prejudice not peculiar to any section of the country. Every good citizen should deplore deeply such acts, but we do not think it just that a wrong statement of the facts should go uncorrected, or that the act which resulted in stirring up the mob was all the basis the mob had to go on. There are lessons in the acts of the Springfield mob. It is not related that during months previous to this most deplorable happening, white people had been nightly held up by negro robbers; that the Springfield citizens were afraid to go out at night for fear of such attacks from negroes; that they were growing more and more insolent in their behavior towards the whites. Not a month before the lynching one of the leading lawyers, a republican, said to the writer: "There is a day of reckoning coming for these depredations." We had been discussing the affairs above mentioned. A volcano was being prepared because of such violence on the part of the bad negroes in the community and when it burst forth it involved the race, and but for the timely conduct of Gov. Folk would probably have resulted in an attempt to drive the negroes from the community. We heard a negro remark that he was going back to Kentucky, because there all the white people did not blame all the colored people for the crimes of the bad ones. The race prejudice is no more unreasonable in Springfield, Ohio, than in Springfield, Mo. Of course the leaders of the mobs in both places were not of the class that does the most thinking.

The measure of race prejudice in the class of which the mobs were composed in the two Springfields may be estimated by the acts of those mobs. We have the race problem on our hands and have heard its mutterings. What of the future, in view of the fact that this race prejudice exists every where? The same element which made up the mob in Missouri exists in New York, Massachusetts, Washington, Texas or Ohio. Given the same conditions, the same thing would have happened in any of these places. The race prejudice is just as susceptible of development in Boston as in Missouri. The same conditions are not to be found in Boston as existed in Springfield, Mo., when the mob arose. Mutterings may be heard in Chicago which portend the growth of this race prejudice. Human nature is the same the world over. A section of the country which knows nothing of the conditions existing at Springfield can not understand the growth of man into

beast. Yet there would grow up in that same section, under the same circumstances, identically that which grew up in Springfield. Mr. Justice Brown on retiring from the Unitee States Supreme Bench made some pertinent remarks upon mob law. He said in effect that so many technicalities had grown up in our criminal laws, which aided in the escape of criminals, that people had grown to distrust them, and mob law has grown apace. In Springfield, while the mob was pushing its fearful work, some one tried to induce the leaders to let the law deal with the negroes taken from the jail who were charged with crime. The reply was: "D——n the law!" Mr. Justice Brown pointed out the fact that the great principles which make for justice were being lost sight of in the process of following case law. Mistrust of the effective administration of the law and race prejudice were rampant in Springfield and would be in Boston under the same conditions.

NOTES OF IMPORTANT DECISIONS.

CARRIERS—CAUSE FOR UNAVOIDABLE DELAY IN SHIPMENT OF CATTLE, NO EXCUSE FOR FAILURE TO EXERCISE REASONABLE CARE.—The recent case of Chicago, B. & Q. Ry. Co. v. Slattery (Neb.), 107 N. W. Rep. 1045, is important. It appears from the testimony on behalf of the plaintiff that on the 28th day of May, 1903, he came into the city of South Omaha over the Union Pacific Railroad, with a carload of horses; that they were there delivered to the Union Stockyards Company. He applied to the live stock agent of the defendant company to have the horses shipped out over the defendant's line to East St. Louis, and informed the defendant's agent that he was going out that evening on the passenger train to St. Louis; that he signed a contract in blank, and also a shipping order to the Union Stockyards Company, and thereupon left for St. Louis; that the horses were delivered to him in St. Louis on the afternoon of June 3rd in a gaunt and damaged condition, some of them suffering from pneumonia, from the effects of which one died in two or three days, and another some weeks thereafter; that on the route covered by the shipment there were facilities for unloading and feeding stock at Creston, Iowa, St. Joseph, Mo., and other points. On behalf of the defendant, the evidence discloses a condition arising from an unusual storm and flood, sufficient, without question, to excuse the delay; that the shipment arrived at Monroe, Mo., on the morning of June 1st, where the horses were unloaded, fed, watered and cared for until the next day at 9 o'clock p. m., when they were reloaded and forwarded to St. Louis. The contract set out in the company's answer was put in evidence and contains this condition: "In consideration for free transportation for one person, designated by the first party (plaintiff), hereby given by said railway company, such persons to accompany the stock, it is agreed that the said cars, and the said animals contained therein, are and shall be in the sole charge of such persons, for the purpose of attention to and care of said animals, and that the said railway company shall not be responsible for such attention and care. * * * It is agreed that the said animals are to be loaded, unloaded, watered, and fed by the owner or his agents in charge." The evidence also disclosed that the shipping contract was delivered to the conductor in charge of the train at the city of South Omaha, and when he discovered that no person was aboard in charge of the stock he returned the contract to the company's agent, who forwarded it by mail addressed to the plaintiff at East St. Louis, Ill., where it was received by him. There was no evidence as to whether the stock was at any time unloaded, fed, and watered, between the time it left South Omaha on May 29th and the time it was unloaded at Monroe, Mo. On behalf of the railroad company it was claimed that the transaction was an interstate shipment and governed by federal statute. Section 4386 of the Revised Statutes of the United States [U. S. Comp. St. 1901, p. 2995], provides "that no railroad company within the United States whose road forms any part of a line of road over which cattle, sheep, swine or other animals are conveyed from one state to another, shall confine the same in cars for longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental cause." By section 4387 [U. S. Comp. St. 1901, p. 2996], it is provided: "Animals so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, and in case of his failure in so doing, then by the railroad company transporting the same, and such company shall in such cases have lien upon such animals for food, care and custody furnished and shall not be liable for any detention of such animals." The statute also provides a penalty for the violation of these provisions.

The court said: "We do not understand how the defendant is aided by the provisions of the federal statute. It is true that the obligation, in the first instance, rests upon the owner or his agent in charge, but it attaches with equal force to the public carrier in case of default by the owner. Nor is the carrier released from its responsibility by reason of the express terms of the written contract whereby the shipper agreed to accompany the stock but failed to do so. Where the company, with knowledge of such failure, proceeded under the shipping contract, it would still be liable for any loss result-

ing from its failure to provide the stock with proper care and protection. C. B. & Q. Ry. Co. v. Williams, 61 Neb. 609, 84 N. W. Rep. 832, 55 L. R. A. 289. The case does not fall within the rule of C., St. P. M. & O. Ry. Co. v. Schuldt (Neb.), 92 N. W. Rep. 162, where not only was there an agreement that the shipper should accompany the stock and be responsible for its care, but he was provided with transportation for that purpose and personally accompanied the shipment, and it was held that the carrier was only required to provide proper facilities, and, when doing so, was not liable for injury arising from lack of care through the fault of the shipper himself.

Again, liability on the part of the company is denied because of the failure of the plaintiff to prove that the railroad company did not stop the shipment for feed and rest at such places as were possible; that, if he claims damages on account of the failure to perform that duty, the burden was upon him to show that the company failed to perform it. A carrier of live stock is an insurer of the safety of the property while in its charge for transportation. Kinnick v. C., R. I. & P. Ry. Co. (Iowa), 29 N. W. Rep. 772. There are, of course, exceptions to this rule, but the delivery of live stock to a carrier in good order, and their arrival at the place of destination in bad order, makes a *prima facie* case against the carrier, and it devolves upon the carrier to show that the loss or damage resulted from some cause which would exempt it from liability. Wabash R. Co. v. Sharpe (Neb.), 107 N. W. Rep. 758.

But it is said that the damage was the direct result of an act of God. This conclusion, however, is not justified by the evidence. The evidence in that respect, as already stated, was sufficient to show a just cause for delay, but there is an entire absence of evidence to show that the flood, in any manner, interfered with the unloading of the stock, providing it with food and water, and giving it such care as would insure its delivery at the destination in good condition. A cause for unavoidable delay in shipment affords no excuse for a failure to exercise that degree of care required of a common carrier in the transportation of stock. Kinnick v. C. R. I. & P. Ry. Co, *supra*."

SALES—EXPRESSION OF AN OPINION NOT A WARRANTY IN SALE OF AUTOMOBILE, WHEN?—The case of Warren v. Walter Automobile Company, 99 N. Y. Supp. 396, presents a case which may often arise and which seems to us to have been decided upon correct principles. Plaintiff alleged in his complaint that defendant warranted that the machine was in first-class and perfect order and ready to run, that it was a new machine and had not been run over 250 miles, and that the tires thereon were new and had not been run over 250 miles. He then alleged that in truth and in fact the car had been run more than 2,000 miles, that the tires were old and been patched and recovered, and that at the time of sale this was known to the defendant and unknown to the plaintiff, and could not be discovered by inspection. He further alleged that the tires, if in the condition represented by defendant, would be worth $350, and that in fact they were worth only $50, and that he therefore suffered damage amounting to $300. He also asked for other damages because of his having to make other repairs to the car. Before purchasing the car the plaintiff took long journeys in it and declared his satisfaction with it. It appeared to be then in excellent order. It was delivered to him April 15 or 16, 1905. After its delivery plaintiff seems to have operated it with inexperienced men. Thereafter there were frequent interruptions in the operation of the car. After this had gone on for some time an examination disclosed that some of the parts of the car were out of order and needed repairing. The repairing cost $73. After certain denials, the defendant set up as an affirmative defense that the plaintiff purchased the car after fully testing it, and accepted and paid for it after full opportunity to examine it, and there was no warranty of any kind. The learned trial justice evidently found that there was a warranty which survived acceptance as to the tires, that there had been a breach of this warranty, and that the damages sustained thereby were $240, the amount expended by the plaintiff for new tires, and the amount, excluding costs, for which judgment was rendered. It appears from the evidence that in the latter part of June, 1905, one of the tires burst at Elizabeth, N. J., as the plaintiff was returning from Deal Beach. The tire was taken off and found to be patched on the inside. Soon after two others of the tires broke, and they also were found to be patched on the inside. These patches could not be seen unless the tires were removed. The plaintiff testified that he had not caused them to be patched, and claimed that the patches were put on before the delivery to him. The defendant's salesman and defendant's vice president both testified that no patches were on the tires at the time of delivery to the plaintiff, and that they were new tires at the time they were put on in November, 1904. Plaintiff testified that the defendant's salesman said that the tires were fine Michelin tires and were as good as new. He claimed that these statements constituted a warranty as to the condition of the tires, for breach of which he can recover after acceptance of the tires.

The court in reversing the case said: "Even assuming that there was such a warranty, we cannot find anywhere in the testimony any evidence of its breach. The tires are admittedly Michelin tires, and the plaintiff offered no proof to show that the patches were on the tires at the time of their delivery to him. He discovered the patches for the first time in the latter part of June, 1905, a little more than two months after he received the machine. While he says that he did not cause the patches to be put on, it does not follow

that they were not put on by others in his employ without his knowledge. Moreover, there is no evidence to show what caused the bursting of the tires, whether the natural weakness of the tires which the patches had failed to repair, or some other agency or obstruction in the roadway, against which even the newest of tires would not be proof. On the other hand, the defendant does offer direct proof that the tires were unpatched at the time of the delivery to the plaintiff. But we think that there was no warranty as to these tires. The plaintiff knew they were second-hand tires. That they had been used in a rock-climbing contest in November in 1904 and had gone about 250 miles. The statement attributed to defendant's salesman that the tires were as good as new is merely an expression of an opinion as to their condition, and not a warranty of the present existing fact, made to induce the purchase. And the judgment was for this reason reversed.

BANKRUPTCY—ASSIGNEE ACTING AS TRUSTEE WITH THE APPROVAL OF REFEREE, ENTITLED TO PAY FOR SERVICES PRIOR TO APPOINTMENT OF A TRUSTEE IN BANKRUPTCY.—An interesting point was recently determined according to good sense and justice in the case of *In re* Pattee, in the United States District Court of Connecticut, 143 Fed. Rep. 994. The facts were as follows: On August 26, 1904, the bankrupt made a common-law assignment to John W. Smart, of Boston, for the benefit of his creditors, of his property rights in two hotels, viz., the Hotel Russwin, in New Britain, and the Hotel Connecticut, in Waterbury. Mr. Smart disposed of the Hotel Russwin property for about $4,000, paid all the expenses connected with managing the hotel and disposing of the property, and delivered to the trustees in bankruptcy $2,766.67, which was the net amount received after such payments, retaining nothing, so far as appears, to compensate himself for services. Mr. Pattee was adjudicated bankrupt on October 29, 1904, and the trustee was appointed November 15, 1904. At the time of adjudication Mr. Smart was found in possession of what remained of the bankrupt's property, holding under the common-law assignment. With the consent and the approbation of the referee, he continued in possession until the trustee was appointed. The claims which the referee has ordered not to be paid arise out of the treatment of the property by Smart during the *interim* between October 28, 1904, when he began to act as a *quasi* trustee for the creditors, and November 15, 1904, when the appointment of the lawfully chosen trustee terminated such condition.

The referee admits that Smart ran the Hotel Connecticut at a profit during that time, and that he earned what he demands, and that he would order it paid, if it were not for the way Smart has acted in the matter. The referee says that Smart did not do the best that he could for the estate, because he did not turn over to the trustee a lease of the hotel, which he had taken in his own name, and which contained a provision that it could not be assigned without the consent of the lessor. No other reason is given for refusing payment of Smart's claim for services. It appears, however, that the lessor, Haase would not consent to the acceptance of the trustee as the assignee under the lease. The court ought not to permit itself to surmise that the position taken by Haase was due to a scheme concocted by himself and Smart. The fact that Haase did not and would not consent to the turning over of the lease to the trustee made such a turning over impossible. The referee, therefore, proposes to punish Smart because he did not perform an impossibility. Smart's claim for services rendered the trustee, and ordered not paid by the referee, was $500; but in the argument of the review he only insists upon $319.65. The latter amount appears to have been fairly earned, and must be paid by the trustee.

WHAT OF OUR AMERICAN STATES?*

The theme of this discussion has been and is uppermost in my mind, especially since, in recent years, the lurid lights of the federal power have been ablaze along the horizon of our republic in such a spectacular way, obscuring, if not obliterating, the powers and rights of the states. It is a question concerning which many serious-minded people are deeply anxious; many think the fate of our American states is trembling in the balance. Like others, I am solicitous, though not without hope that the American states will be preserved in their ancient vigor. There never has been a time in the history of our country, however, when it was more important than now that our lawyers, jurists, judges and law teachers should well consider and reconsider the fields of federal and state jurisdiction in the exercise of governmental powers. It seems strange that anyone should want to see our dual system of government, national and state, destroyed. Yet it is surprising to learn of the number who assume to believe that the states have outgrown their usefulness and are of minor consideration. It took many years, after the American revolution, to firmly establish the national government. The articles of confederation proved unstable and insufficient, and only

* Annual Address of Illinois State Bar Association, delivered by James Hagerman, at Chicago Beach Hotel, Chicago, Ill., July 13, 1906.

after the labors and trials of our forefathers had planted the federal union upon the firm basis of the federal constitution, did it assume strength; and afterwards, for a long time, was threatened with dissolution, until its permanency was finally determined by the civil war.

Do not misunderstand me. I would be the last to deny to the federal government any of the powers, express or implied, granted by the constitution or its amendments; though I may not believe all are required to be put in motion, for too much government may lead to bad government. In practice, the growth of the federal power, since the adoption of the constitution, has been marvelous, and in later days has gone forward, and is now going forward, with tremendous strides. After the discovery of America and the settlement of the European colonists upon her soil, the greatest event in the history of our country was the result of the French-English war, upon the plains of Quebec, which determined that our laws and civilization should be those of the Anglo-Saxon race, the basic principle of which was local self-government, guarded by a proper central authority. The next controlling event in our history was the union of the American colonies in the continental congress, to defend their right of self-government and to resist the aggressions of Great Britain. Then quickly followed the declaration of independence, whereby it was solemnly published and declared, "that these united colonies are, and of right ought to be free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes and our sacred honor."

In 1777, the year following the declaration of independence, while the war of the revolution was being waged, these thirteen states, which had declared their independence, striving for a perpetual union, adopted the articles of confederation, in which they declared that the style of the confederacy should be, "the United States of America," and that each state should retain its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in congress assembled. By these articles, the states severally entered into a firm league of friendship with each other, for their common defense, the security of their liberties and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any pretence whatever.

The articles of confederation having proved too weak; the government thereby created having no executive or sword, no power to levy taxes, no treasury, and no judiciary; a stronger federal government was needed, and hence the adoption in 1787 of the present constitution of the United States, which was ordained and established to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

A most marvelous extension of the area of the United States has occurred since the adoption of the constitution. Indeed, before its adoption, the federal government had entered upon a career of state building, for, Virginia having made her cessions the northwest territorial ordinance was passed by the congress under the articles of confederation, providing for the peopling and government of that territory and for the ultimate formation of five states of the American union therefrom, and from which subsequently the States of Ohio, Indiana, Illinois, Michigan and Wisconsin were created. Afterwards other cessions were made by the colonial states south of the Ohio, notably Virginia, North Carolina and Georgia, from which new states were created. Then came the acquisition of Louisiana, the Spanish and Mexican cessions, the admission of Texas and the discovery of Oregon. There was a solid reason for the extension of the field of federal control over the internal affairs of the union, arising out of this growth of the country. The inhabit-

ed and civilized portion of the thirteen states which adopted the constitution, was originally comparatively a narrow strip of land along the Atlantic Ocean. The federal constitution was based on the theory of territorial expansion, with a view to the admission to the union of new states with all the rights of the original states. The aggressive policy of the federal government from the first was to build new states and incorporate them into the Union. Lands to the west were secured by cessions from the original states, and by treaties with Spain, France, Mexico and England, until the territorial possessions of the United States extended from the western boundaries of the original states westwardly to the Pacific Ocean, northwardly to Canada and southwardly to the Gulf of Mexico and the Republic of Mexico. Of all this vast area of country, Texas alone was never a territory of the United States. From the Republic of Texas, she passed at once to the union of states without undergoing the probationary territorial period. Over the area of our territories, the federal power alone extended and was supreme. These territories were without the limits of any state, and within the territorial area no state had jurisdiction. In them the federal power waged the Indian and foreign wars, determined the disposition of the public lands, established the courts, provided the legislatures and governors, enacted the laws, and executed all the authority of a sovereign, unchecked by state authority. Wisely, however, and pursuant to the policy of the framers of the constitution, this territorial area was gradually narrowed by the admission of new states clothed with all the authority of the original states. When a new state was admitted, the larger power of the federal government was displaced, and the authority of the new state was enthroned. Around these new states the questions of party politics raged for many years. Around them centered the policies regarding the extension of prohibition of slavery. Touching them, the great battle of 1860 was fought and the civil war brought on. We all know that they were territorial questions that brought about the great debate between Lincoln and Douglas in your state, and made each the candidate of his respective party for president. Generally during the controversy, whether these territories should be free or slave soil, a spirit of compromise was abroad in the land, and whenever a northern territory was admitted to statehood a southern territory was likewise admitted to preserve the balance of power between the sections. On all these questions concerning the territories the federal power was necessarily always in evidence. Armies were marching across the territories to fight the Indians and to preserve peace, and the federal courts and marshals were everywhere, in the territories and states, enforcing or attempting to enforce the fugitive slave law. When the civil war came, the activities of the federal power necessarily became almost universal and predominant throughout the states as well as territories. Then followed the reconstruction period and the attempt to make of the southern states provinces instead of states, which came to naught under the decision of the Supreme Court of the United States, speaking through Chief Justice Chase, in Texas v. White, 7 Wallace, holding that the rebellious states had not lawfully seceded, and that our government was an indestructible union of indestructible states, followed by the sober judgment of the American people against the radical unconstitutional reconstruction policies which had been proposed.

A recent historian (see Mr. Frederick Trevor Hill's "Lincoln the Lawyer," in the May *Century*) says: "On the 11th of April, 1865, only four days before his death, Lincoln spoke of the work still uncompleted. It was the hour of countless legal questions concerning the status of the seceded states, all based upon the inquiry whether they were still in the union, or out of it, and hot discussions on this delicate point were carrying the disputants far afield. The great advocate, however, waived the quibbling issue aside and passed directly to the heart of the case. That question, he remarked 'is bad as the basis of a controversy and good for nothing at all—a merely pernicious abstraction. We all agree that the seceded states, so-called, are out of their proper relation to the union, and that the sole object of the government, civil and military, in regard to those states is to again get them into that proper relation. * * * Finding themselves safely at home, it would be utterly imma-

terial whether they had ever been abroad. Let us all join in doing the acts necessary to restoring the proper, practical relations between these states and the union, and each forever after innocently indulge in his own opinion whether in doing the acts he brought the states from without into the union, or only gave them proper assistance, they never having been out of it.' ''

So the view of Mr. Lincoln was, that after the war the states were to assume their old-time relations to the federal union, modified only by such constitutional amendments to be made as provided by that instrument. After the practical failure of the congressional reconstruction acts, following the civil war, to impair the rights of the states and to augment the powers of the federal government, except so far as justified by the thirteenth, fourteenth and fifteenth amendments, there seemed for a time to be no disposition on the part of any considerable portion of our people to augment the national powers, even where justified by the constitution. During recent years, and down to the present time, there has been a series of successive acts of congress widely extending the field of the federal powers. Whether all are justified by the constitution, I shall not attempt to discuss; whether all are wise, I shall not assume to express an opinion. I am only noting the drift and the tendency. Among these acts are those establishing the departments of agriculture and of commerce and labor, with their various bureaus, notably the bureau of corporations; those regulating railroads and telegraphs engaged in commerce, interstate and international; the anti-trust laws, including the Sherman Act; those affecting the equipment of cars and locomotives of carriers engaged in interstate and international commerce; those preventing the exportation of diseased cattle, and providing for the extirpation of their contagious diseases; those acts and treaties acquiring our island possessions, and the various tariff acts, with protection to American industries and labor as their corner stone. All of these acts, and more, have been in the direction of the extension of federal control. During this period there were few acts of consequence which I can now recall diminishing or restricting federal power except where territories were admitted to statehood and thus subjected to the control of state laws. During the session of congress just adjourned, bills to cover a wide range of legislation, such as the prevention of over-capitalization by corporations, the limiting of hours of labor of railway employees, limiting injunctions against labor unions, protection of animals and children throughout the United States, securing of uniform divorce laws, regulation of insurance and insurance companies, were urged, but none of them was passed. Acts were passed regulating railway rates on interstate commerce, prescribing employers' liability in interstate commerce transactions, regulating the inspection of meats transported as interstate or foreign commerce, prohibiting the manufacture of impure, adulterated or misbranded articles of food or drugs in any territory, including the insular possessions and the District of Columbia, and prohibiting the introduction into any state or territory of such articles. Here, again, no proposition was seriously made or acts passed limiting the field of federal power, except the act providing for the admission of Oklahoma and the Indian Territory as one state and New Mexico and Arizona as another. To-day, within the area of the states, the only powers which the federal government can exercise are those within the leaves of the constitution, and they are the powers expressly or impliedly granted to congress, the president, and to the courts, the three departments of government, legislative, executive and judicial.*

The recent act of congress, in providing for the admission of two new states, Oklahoma and the Indian Territory as the forty-sixth state, under the name of Oklahoma, and New Mexico and Arizona as the forty-seventh state, under the name of Arizona, marks an era in the history of our country of great importance. When these new states are admitted we will indeed be a continental republic of states, in the form of a parallelogram, extending from Washington to Florida and from Maine to California, comprising an area of contiguous territory over every foot of which the power and jurisdiction of the states will extend, except the District of Co-

*Here Mr. Hagerman read and commented at large upon the articles of the federal constitution granting powers to the congress, the president and the judiciary, denying power to the federal government and the states and also the fifteen amendments to the constitution, and then continued.

lumbia, and such other places purchased by the consent of the legislatures of the states in which the same shall be, for the erection of forts, magazines, and arsenals, and other needful buildings, as provided by Sec. 17 of Art. 1 of the federal constitution. We will thus be rid of all adjacent and border territory, questions touching which have occupied so much of the attention of our national congress and national officers since the beginning of our government. Within this vast area there will be no longer room for the exercise by the general government of those powers which it has heretofore exercised over territories,—powers which were supreme, except as limited only by the federal constitution. Hereafter our outlying territorial possessions, until we come to take Canada and Mexico, will be far removed, and will not be connected with the administration of the affairs of the states, in the sense of those questions relating to the territories which lay upon the border of, or were adjacent to the states, in the olden time. By the treaties with France as to Louisiana territory; with Spain as to the Floridas; with Mexico as to California; New Mexico and Arizona; we were pledged to admit the acquired countries into the union of states. We are not pledged by treaty to admit Alaska and our insular possessions to the union of states. There is no immediate demand for their admission, and they will doubtless undergo a long territorial pupilage. The point I wish to enforce is, that thus the territorial questions of the future will be more distinct propositions, aside from state questions, than they have heretofore been. Within the area of the states the federal power to be exercised will not be the power over territories, but within the states. Alaska is removed more than a thousand miles from the border of the nearest state, while our other possessions are islands of the sea. No immediate question of statehood will concern us as to these territorial possessions. We will have time to build territorial policies to meet exigencies of coming times. The very separation in point of time and distance of these territorial possessions from the states themselves will prevent a confusion of powers, separate state questions from federal questions, in a sense that they have not heretofore been separated, and remove grounds of dispute which have heretofore existed. It will enable us, let us hope, to more clearly distinguish the different powers and jurisdictions of the federal and state governments. It must be borne in mind that it will be the voters of the states, those created by the states and whose qualifications are prescribed by the states, who will choose, directly or indirectly, the federal officers and determine federal policies. This power of the states to choose is the supremest of powers. The lower house of congress shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. The senate of the United States shall be composed of two senators from every state, chosen by the legislature thereof for six years, and each senator shall have one vote. It may be that this clause will be soon amended by providing that the senators be chosen by the people of each state. The president is elected by electors, appointed in such manner as the legislatures of the respective states may direct, equal to the whole number of senators and representatives to which the senate may be entitled in congress. The president thus chosen, with the advice and consent of the senate, appoints ambassadors, public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointment is not otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments; and the president has power to fill vacancies until the next session of congress.

Thus, in the last analysis, all the official organism of the federal government is dependent upon the will of the voters of the states, whose qualifications are alone prescribed by the respective states, with only the single limitation that no state shall deny or abridge the right to vote on account of race, color or previous condition of servitude. For instance, the states may prescribe the age and other qualifications of the voters, but cannot discriminate between them on account of race or color. If manhood suffrage is given, all male citizens of whatever color or race must

be treated alike; should the right of suffrage be conferred upon women, all women, regardless of color or race, must be embraced. With the line of cleavage drawn between the federal power as it applies to territories and in its application to the states of the union, will not our people see more clearly than they ever have seen, the difference between the federal and the state powers as applied to the states? Will it not be more difficult for a party to grow up in this country in favor of the abolition of state lines and the creation of a centralized government in which this vast area of country, presently to be comprised in the forty-seven states of the union, will be converted into provinces? When we speak of our American form of government, we mean the government of the United States and the governments of the various states. These governments have been said to be like the centripetal and centrifugal forces in nature. There have been two heresies affecting them, one that of centralization and the other that of secession, and if either had prevailed, then our American form of government would be different from what it is.

The heresy of secession went down in the smoke and shock of battle; that of centralization still confronts us, and remains yet to go down through the verdict of the American people, to be acquiesced in like their judgment against secession, and then, and not till then, will the government as planted and nurtured by the fathers be secure. The states are vital parts of our American government. They have to deal with the fundamental questions of our social life; they protect our people in their lives, their liberties, their reputations and their property; they determine and guard all our titles; they provide for the descent and distribution of our estates; they regulate our wills; they register our births and deaths; they protect us during our sleeping and waking hours; they watch over our habitations and homes; determine our marriage relations; protect and enforce our contracts; they guarantee to us religious freedom—the right to worship God according to the dictates of our own consciences; they rear our school houses, and they protect the final resting places of our people, the very willows that weep for the dead and the evergreens that point to the realms of immortality. The federal government, on the other hand, stands for our people and our states against the outside world, discharges all our international obligations and duties; governs and controls our territories; preserves peace between our states; administers justice between the states and between the citizens of the different states, and controls and regulates our international commerce and commerce between the states, and various other matters of national as distinguished from local concern, enumerated in the federal constitution. The line of demarkation between the powers of the federal government and those of the states, is sufficiently defined to enable us, for most practical purposes, to distinguish them. As illustrated by the conflicting opinions of the courts and judges, and the opposing views of political parties, there are many questions which are in dispute, lying along the border line. Yet there is a sufficient consensus of opinion as to the meaning of the federal constitution respecting governmental powers, to serve the patriotic purpose of preserving the unity and strength both of the federal government and the state governments.

The tendency which we have to fear in the future is the encroachments of the federal power upon the powers of the states. To resist this tendency, it seems to me, is the duty of the lawyers of the country. We are sworn to obey and uphold the federal and state constitutions alike. There is no longer any serious danger that the states will successfully encroach upon the federal power, for that represents the power of the combined constituency of the states. The states, however, so far as their rightful powers are concerned, should be guardful of the rights of each other. Our profession should henceforth be as careful in pointing out the unconstitutional measures of the federal government as it has been in challenging similar measures in the states. My hope for the future of the states is, that the people of this country, guided by their statesmen, their jurists, their bench and bar, will more clearly than ever before see and observe the divergence of powers between the federal and the state governments, as defined by the federal constitution. If there be needed amendments to the federal constitution, either extending or limiting the federal power, let them be made as prescribed by the constitution. Let

there be no revolutionary construction to augment the powers of the federal government at the expense of the states. As I have already shown, our federal government is soon to be a continental republic, with an unbroken cordon of forty-seven states, extending from ocean to ocean, bound together by a common interest and linked by a common destiny. The voting constituency of these respective states determines the official organism of the federal government; for they, and they alone, elect the congressmen, senators and the president; and the president and congress in turn appoint the corps of officials, including the judges. This continental republic of states in turn, through their federal government, governs, subject only to the constitution of the United States, the outlying territory of Alaska and the insular possessions of Hawaii, Porto Rico, Guam, Samoa, the Panama Zone, and the Philippines.

Professor Bryce, in his American commonwealth, says, the American states, their history, their constitutions and laws, and their institutions, exceed in interest those of the United States itself; that so little has been written about the states, and so much about the United States, that foreigners know but little of the states. We can assure Mr. Bryce that the Americans care much for their states, and their affections go out to them as much as to the nation itself.

To the philosophic-minded American, there is a charm in the difference between the states, their laws, constitutions, institutions, and even their prejudices and provincialisms, just as there is a variety in the topography, climate, productions and industries of the states. This divergence is, in many ways, more desirable than a dead and unbroken uniformity, just as a landscape of mountain, lake, valley, forest, river and plain, is more entrancing than one of unbroken prairie or forest. If the question were put to the people of any state of the union, whether it should be merged with some other state, or be subdivided into two or more states, there would, I doubt not, be an almost, if not quite universal consensus of opinion in every state against either proposition. Not one of the New England states would permit itself to be added to the Middle States, nor would Texas, though it has the reserved right to do so, permit itself to be subdivided into other states. Each state, with its history and traditions, with laws and institutions adapted to its conditions and wants, stands forth in generous rivalry with the others for excellence in government and administration, and, let me add, with a common and undivided loyalty to the nation. No state would consent to have the star which represents it in the national flag erased, nor its coat-of-arms or seal destroyed. I am reminded of a pretty story which Judge Phillips, of the United States District Court for the western district of Missouri, tells of a civil service examination held in his district, where one of the class, a big strapping, gangling boy was asked, "Are you a grammarian?" and he replied, growing about three feet taller as he said it, "No, damn it, I am a Missourian." So it will be found all down the line of the American states, a local pride and love on the part of the people for the state in which they live.

In the discussion of the relative powers of the federal government and the states, great injustice has been done the states by much use of a narrow phrase, in which the governmental powers of the states are spoken of as the police powers of the states. I do not know who originally invented that phrase. It came either from a narrow, technical mind, or from some arch enemy of the states. The proper phrase to be used in all such questions is "governmental powers." What are the powers of the federal government? What are the powers of the states? Some of these powers are exclusive in the federal government; some exclusive in the states; some are concurrent in both governments. Where, in the exercise of the powers, there is a conflict, the powers of the federal government prevail. In all cases the question is one of governmental, not of police powers. The phrase "police powers," as attempting to define governmental powers, dwarfs and minimizes the issue.

The federal power rightfully extends to the reasonable control and improvement of our interstate and international rivers, lakes and seas,—to the fair regulation of interstate and international highways, whether railroad or earth road,—to the gathering of information from all sources, on all topics, to enable the nation to the better discharge its constitutional duties. It rightfully covers the regu-

lation of commerce between the states, with foreign nations, and the Indian tribes, to the end that such commerce may be made free and be not obstructed; free, like the winds; free, like the currents of the rivers rising in the mountain springs and flowing unvexed to the sea; free from the interference of the states; free from strangling monopolies of every form; and, above all, free from the unnecessary and tyrannical exactions and restrictions of the federal government itself. Commerce, however, as used in the constitution, refers to the physical movements of men and things, in trade and exchange, in passing from place to place, and not to every character of business.

Gentlemen: If the time shall come when the integrity of the states, their powers and jurisdictions over their domestic affairs, their lives, liberties, properties and business shall be unduly invaded by the encroachments of the federal government, with its beaurocratic and autocractic administrations, there will awaken a power like that which came to the rescue of the federal union when its integrity and life were assailed. When that time comes these American states, composing this continental republic of which I have spoken, through their voting constituencies, which are created by and whose qualifications are prescribed by each state, will stand as a unit for the preservation of the states, each and all of them; and there will be no sectional divisions, as there were over the slavery question, to draw the states apart; and the mandate will go forth from the states choosing the official organism for the federal government, calling to power men whose first duty will be to see that the inherent and inalienable rights of the states are respected and preserved. In this way a great nation, which will preserve its own autonomy and that of the states, and which will be doubly strong from the fact that it does not seek to draw unto itself power not belonging to it, and does not intermeddle with that which does not concern it, will be established, maintained and perpetuated.

TELEGRAPHS—INJURY RESULTING FROM REFUSAL TO ACCEPT TELEGRAPH MESSAGE RECOVERABLE AND DAMAGES FOR MENTAL SUFFERING.

WESTERN UNION TELEGRAPH CO. v. SIMMONS.

Court of Civil Appeals of Texas, Feb. 7, 1906.

In action against a telegraph company for refusal to accept a message for transmission to a point on a connecting line, it appeared that on the day before it had accepted a similar message for transmission to the same point, and did not know, at the time of its refusal to receive the second message, that the first had not been delivered, and that, when a similar message was subsequently transmitted by it and delivered to the connecting line, the sender promptly received it. Held, to warrant a finding that the proximate cause of the injury sustained by the sendee was the refusal of the company to transmit the second message.

The petition, in an action against a telegraph company for the refusal to transmit a message, alleged that the sender was the wife of plaintiff to whom the message was directed; that the message announced that a daughter of the parties was dead, and that another daughter was sick, and requested plaintiff to come home to attend the funeral. Held, that the mental anguish of the wife, arising from the absence of the husband at the funeral, in consequence of the refusal to transmit the message, was recoverable; the message being for the benefit of both parties.

FLY, J.: Appellee instituted this suit to recover of appellant the sum of $1,953.40, as damages alleged to have accrued to him on account of the failure and refusal of appellant to expeditiously transmit and deliver a message accepted by it, and on account of the refusal to accept other messages which the wife of appellee sought to send him from Seguin, Tex., to La Cananea, Sonora, Mexico. The messages were intended to communicate to appellee information of the death of his daughter Corinne, and other serious illness of his daughter Gladys. A trial by jury resulted in a verdict and judgment in favor of appellee for $1,000. It appears from the statement of facts that appellee was, in November, 1902, in La Cananea, Mexico, engaged in his occupation as a carpenter, and his wife and three children were in Seguin, Tex. In the latter part of November, 1902, the two older children, of the ages 10 and 11 years, where taken with what was called "follicular" tonsilitis by one physician and "acute" tonsilitis by another, and on the night of the 26th of that month, the older child, Corinne, died, and Mrs. Simmons, desiring the presence of her husband at the funeral, delivered to appellant's agent at Seguin a message, which was to the effect that Corinne was dead, and Gladys very sick, and for him to come at once. The agent stated that there was no such place on appellant's line, but accepted it and promptly transmitted it to Benson, Ariz., where it was delivered to the agent of the Postal Cable & Tele-

graph Company. At that time the only method of conveying telegraphic messages from Seguin to La Cananea was by appellant's line to Benson, and thence by two connecting lines of telegraph. Not receiving any answer to the message, which in fact was not delivered to appellee until Novemebr 30th, on the morning of November the 27th Mrs. Simmons, through her agent, presented another message, to appellant's agent, with the money necessary to pay for its transmission to La Cananea, as follows: "Corinne is dead and Gladys very sick. Come home at once." The agent refused to accept the message, stating that he had sent one message to that address, and was afraid to send another. That tender of the message was made early in the morning. The jury was justified in finding that, if the message had been promptly transmitted appellee would have received it, and would have had the funeral of his child postponed until he reached Seguin. If he had received the message before 9:30 o'clock a. m. on November 27th, he could have reached Seguin on the night of November 29th, just three days from the time that Corinne died. Had the message been received at any time within 20 hours from the time that it was tendered to appellant, appellee could have reached Seguin on the night of November 30th, four days after the death of the child. The testimony showed that the body could have been embalmed and kept for five days, and that Mrs. Simmons would have had the body embalmed if she had heard from her husband. Not hearing from her husband, the child was buried on the afternoon of November 27th. Appellee suffered great mental anguish on account of not being at the funeral of his child, and Mrs. Simmons suffered great mental anxiety because of the absence of her husband, who did not receive the message until November 30th and immediately answered his wife. He left on the first train after he received the message, and arrived at Seguin on the night of December 3d. The child was buried on the afternoon of November 27th, because Mrs. Simmons could not hear from her husband. Our conclusions of fact dispose of the first, second, third, and fourth assignments of error which question the sufficiency of the evidence to sustain the verdict. It is argued that, because the negligence of the lines connecting prevented the first message from being promptly delivered in time. appellant should not be held responsible for its refusal to send a second one, because it would have been delayed by the connecting lines. That argument should not prevail. It was the duty of appellant to receive the message and perform its duty, regardless of what other lines might do. When a message was afterwards transmitted by telephone and from San Antonio sent by appellant, not only was it promptly delivered, but 2 hours and 58 minutes after it was sent an answer was received from La Cananea. The jury might have inferred from that fact that the second message would have been promptly delivered by the connecting telegraph lines. At the time that appellant refused to receive the message it did not know that the first message had not been delivered. It was the duty of appellant to accept the message when presented to it with the amount necessary to pay for its transmission, and to deliver it with promptness to the connecting line, and it cannot be heard to defend against its liability for a failure to transmit, on the ground that, if it had been diligent, the connecting lines would not have been diligent. The evidence showed that appellant was guilty of gross negligence in refusing the telegram, and it cannot help appellant that some one else possibly might have been negligent. As said in the case of Railway v. Seals (Tex. Civ. App.), 41 S. W. Rep. 841: "If the Western Union Company was guilty of negligence by unnecessarily delaying the transmission over its line to the Weatherford, Mineral Wells & Northwestern Railway Company, and this negligence contributed to bring about the failure to deliver the telegram to plaintiff, then it would be responsible with the other company for such damages as might legitimately be recovered on account of such failure to deliver the telegram." If it would be liable for failure to deliver promptly to a connecting line, how much more should it be liable for a refusal to deliver at all. Telegraph companies are public agencies, chartered for public purposes and vested with the right of eminent domain in the condemnation of private property for their use. With the grant of these powers and privileges there goes the duty, for a reasonable consideration, to receive and transmit all messages over their lines with promptness, skill, and dispatch. Joyce, Elec. Law, § 14. and authorities noted. The law relating to the receiving and forwarding of telegraphic messages to connecting lines is so nearly analogous to that in regard to common carriers that the established rules of law that determine the liability of the common carrier apply with equal force to telegraph companies. Each can restrict its liability to its own line, but each must receive and forward with diligence to the connecting line, and each will be held liable for its failure or refusal to perform that duty. Smith v. Tel. Co., 84 Tex. 359, 19 S. W. Rep. 441, 31 Am. St. Rep. 59. As said in Railway v. Levy, 59 Tex. 542, 46 Am. Rep. 269: "Telegraph companies exercise a public employment, which imposes upon them duties to the public, which gives to every person the right to have their services in the transmission of proper messages, upon payment of the requisite consideration; and this public duty creates an obligation honestly and faithfully to perform that duty, whenever it is fixed in a given case." Appellant cannot shift its liability for its inexcusable conduct in refusing the second message, by a claim that, if it had performed its duty, its connecting carrier would not, and the telegram would not have been delivered anyway. The law recognizes no such specious defense. It should have performed its duty, and thereby

shifted the responsibility to other shoulders. The law countenances the shifting of liability by duty well performed, but does not countenance the release of one guilty of negligence on a plea that some one else might possibly have destroyed the fruits of its performance of duty by negligent acts. The jury was justified in finding that the proximate cause of the damages suffered by appellee was the negligence of appellant in refusing to transmit the message tendered it on the morning of November 27, 1902. That was the only ground of negligence submitted to the jury. The statements in the sixth and seventh assignments of error are not supported by the facts. The health officer of the city of Seguin, a witness for appellant, testified that the child died with acute tonsilitis, that it was a disease that very rarely terminates fatally, that tonsilitis is infectious only in about the same ratio that pneumonia would be, that he would not have prevented the keeping of the body, and that there would have been no difficulty about embalming and keeping the body for three, four, or five days. That evidence was not contradicted by Dr. Moore, who attended the child in her sickness. Mrs. Simmons had spoken to the undertaker about embalming the body, and would have had it done, if she had heard from her husband.

Through the eighth assignment of error it is urged that the court erred in overruling exceptions to that portion of the petition setting up damages arising from the mental anguish of his wife on account of his absence at the time of the funeral of one child and the sickness of another. The claim is that such damages are "remote, speculative, and uncertain." It was alleged that the sender of the telegram was the wife of J. W. Simmons, to whom it was directed, that his daughter Corrinne was dead and another daughter, Gladys, very sick, and that Mrs. Simmons wanted her husband to come home at once so as to attend the funeral and give her help, comfort, and consolation in the time of her distress. The very language of the telegram conveyed the same information. The mental anguish of the wife, arising from the absence of the husband at the funeral that occurred after the refusal to send the message, was the proximate result of that refusal. The telegram was for the benefit of both the husband and the wife, and the appellant knew it and is liable for damages to both resulting from its refusal to perform a duty it owed to them. The mental anguish of the wife was a natural consequence of the refusal to transmit the message. We do not think the decisions in Telegraph Co. v. Luck, 91 Tex. 178, 41 S. W. Rep. 469, 66 Am. St. Rep. 869, Telegraph Co. v. Arnold, 96 Tex. 493, 73 S. W. Rep. 1043, and Telegraph Co. v. Wilson, 97 Tex. 22, 75 S. W. Rep. 482, hold a contrary doctrine to that herein held, although there are expressions in the Arnold case that might be so construed. In that case, however, the Luck case is relied on, and it was based on the proposition, as stated by the court, that "the mental anguish was not a natural consequence of the failure to deliver the message." That could not be said in a case where the wife is the sender of a message requesting the presence of her husband at the funeral of one child and at the bedside of another sick unto death. In the Luck, Arnold, and Wilson cases the facts showed the absence of friends or not very near relatives, but we have seen no case where it has been held that a wife, the sender of the telegram, could not recover for mental anguish caused by the absence, in a great crisis, of her husband. The telegram refused on the morning of November 27th was tendered to appellant in time for appellee to have received it, so that he could have procured a postponement of the burial of the child, and an allegation to that effect in the petition was properly sustained by the court. The allegations as to other refusals of the same telegram were proper as tending to show a deliberate intention upon the part of appellant to violate its obligation to the public and to show an utter disregard of the rights of Mrs. Simmons. Neither the allegations nor the proof as to the different refusals tended to confuse the minds of the jury, for the court in a clear and perspicuous manner instructed the jury that the investigation must be confined to the telegram tendered on the morning of November 27th. The jury did not evince the least prejudice against appellant and were quite conservative in the amount of damages found by them. The allegation and evidence as to the absence of tariff book containing the name of La Cananca could not have injured appellant, for the simple reason that whether the agent knew anything about the place or not he knew to what place on the line of appellant to send messages intended for places in the state of Sonora, Mexico, and he should have forwarded the message to that place. He did so send the message of November 26th, and thereby relieved his company of liability as to that message. Mrs. Simmons did not insist that appellant should be liable for negligence beyond its line, but tendered a message which she was willing should be written on its blanks, on each of which there is a clause restricting appellant's liability to its own line. There was an absolute refusal to send the message anywhere; the only reason given by the agent being that he was afraid to send another telegram. The language of the agent at the time of refusing the message was relevant and proper to show the motives actuating him in refusing the telegram, and appellant does not complain of its admission in evidence. It insists, however, that the attorney for appellee should not have been allowed to discuss the testimony. If appellant did not want the evidence discussed, it should not have permitted it to go unchallenged before the jury. No bill of exceptions was taken to the testimony when offered, and objection to a discussion of the evidence will not be permitted to relieve appel-

lant of the failure to present proper objections to the evidence when offered. The court might have properly dispensed with the elaborate statement of the allegations in the petition, but appellant has no just ground of complaint on that score. The jury did not seem to have any difficulty in understanding the charge of the court and responded intelligently to it through their verdict. However inflammatory the petition may have been, the moderate size of the verdict fails to indicate that its qualities were communicated to the jury through the medium of the charge. If the court did, as claimed by appellant, assume that the agent refused to send the message tendered to him on the morning of November 27th, there was nothing improper in so doing, because there was no issue on that point. All the witnesses agreed on that fact. The court would have been justified in telling the jury that the agent did refuse to receive and transmit the message. No proposition of law is better settled in Texas. There is no merit whatever in the nineteenth assignment. Appellant's liability was not based on the receipt and transmission of the first telegram, and it could not have injured appellant for the court to state the question as to the reasonable dispatch of the first telegram, even though it was uncontradicted that appellant had performed its whole duty in the matter. The second telegram, which was refused by appellant, was addressed to "J. W. Simmons, care of Mr. Rolfe," while the first was directed to "Wattie Simmons." Mr. Rolfe was a well-known citizen in La Cananea, and when the telegram was at last sent from San Antonio on November 30th, it was delivered in a very short time to appellee, at the same time that the first telegram was delivered. It follows that the address must have had something to do with causing the prompt delivery of the telegram, and consequently there was no error in stating the issue in the charge as to a better address. The message showed that it was delivered as in care of "Mr. Rols," instead of "Rolfe," and yet, just as soon as it was received at La Cananea, it was carried to Mr. Rolfe. The court did not assume that the second message had a better address than the first, but it was left to the jury to determine that matter. It was the duty of appellant to receive any message, not containing improper matter, and to use ordinary care to transmit it to its destination, even though it be beyond its own line, and the court did not err in so instructing the jury. As to what was ordinary care, under such circumstances, the court had already instructed the jury that it meant the transmission of the message, with reasonable promptness, to the end of its own line and its delivery to its connecting line. That duty rested on appellant. There was no error in the instruction restricting the effect of the evidence as to the transmission of the message to La Cananea on November 30th, to the question as to whether the second message could have been delivered in time to have enabled appellee to reach Seguin in time for the funeral. Telling the jury to consider it "for what it was worth only as it may, if it does, throw light upon the question of negligence or no negligence on the part of defendant's agent in failing and refusing to receive and transmit the message tendered on the morning of November 27th, if it was tendered as alleged" was not error of which appellant can complain. This charge is said to give undue prominence to the testimony, but we fail to see it. On the other hand, it seems to contain the intimation that the evidence was not worth much, but what little value, if any, it had was for a certain purpose. It could not have hurt appellant. The same may be said about the charge on the tariff book which is complained of in the twenty-fourth assignment of error. We fail to see any force in the argument that, because a man is in a foreign country when his child dies of an infectious disease, and the body could not be kept for a sufficient length of time to enable him to return without being embalmed, damages for a failure to deliver a telegram apprising him of the death and giving him an opportunity to attend the funeral are too remote to be recovered. The only questions involved were, if the telegram had been transmitted, would appellee have been able to have had the body held until he arrived. The evidence conclusively established those facts. Appellant knew that Mrs. Simmons desired to have her husband present at the funeral of the child, and cannot escape the effects of its negligence by claiming that it did not know that a dead body could be embalmed and kept for four or five days. It ought to have known it, if it did not. It is charged with such knowledge. A witness stated: "I explained all the circumstances to him"—meaning the agent. That must have included the fact that arrangements had been made to keep the body. If the message was written on "plain white paper," as claimed by appellant, it should have had it written on one of their blanks. That was shown to be their custom, and the message was not refused on that ground, but because the agent was "afraid" to send a second one. It follows that the court did not err in refusing to make the fact that "plain white paper" was used an issue in the case. An agent of appellant testified that the agent, who refused the telegram, should have suggested that it be written on other than "plain white paper."

The twenty-seventh and twenty-ninth assignments of error are disposed of by what has been hereinbefore written, and there is no merit in the thirtieth assignment, because the court instructed the jury that they could not find for damages on account of the first telegram, and consequently there could be no error in refusing to charge the jury that they must find for appellant if the first telegram was not delivered early enough for him to have reached Seguin in time for the funeral. The negligence of the connecting line in regard to the first telegram could not justify appellant in

absolutely refusing to receive any message from Mrs. Simmons to her husband.

All that was contained in the special charge, whose rejection is made the subject of the thirty-second assignment of error, was given in the general charge, and it was properly rejected. The thirty-third, thirty-fourth and thirty-fifth assignments are disposed of by what has been said under other assignments of error, and need not be further discussed.

It was alleged that the second telegram was directed to the care of Mrs. Rolfe, and the proof showed that it was directed in care of Mr. Rolfe. The variance was immaterial. When the telegram arrived at La Cananea it was in five minutes delivered, through Mr. Rolfe, to appellee. Charges on that subject were properly refused.

The judgment is affirmed.

NOTE.—*A Connecting Line is Bound to Accept a Message for Transmission—Damages.*—In most of the states, this is declared by statute, that a connecting carrier is bound to accept a message for transmission, but such provisions are merely declaratory of the common law. U. S. Tel. Co. v. Western Union, 56 Barb. (N. Y.) 46; Baldwin v. U. S. Telegraph Co., 6 Abb. Pr. (N. S.) 405, 27 Am. & Eng. Ency. of Law, 1057. The rule relating to the delivery of telegraph messages by one line to a connecting line is governed by the same principles that govern delivery of goods by one common carrier to another, and is not liable for errors or delays to points beyond its own lines without a special agreement. The receiving line undertakes to transmit the message promptly and correctly over its own lines and deliver it to the connecting line.

In Western Union Tel. Co. v. Carew, 15 Mich. 525, Mr. Justice Christiancy held that where a telegraph company established regulations to the effect that it would not be responsible for errors or delay in the transmission of unrepeated messages, and for which an increased charge would be made, and further, that it would assume no liability for any error or neglect committed by any other whose lines or message might be sent in the course of its destination, that such regulations were binding upon those dealing with the company. In the case of Baldwin v. U. S. Telegraph Co., 45 N. Y. 744, the defendant received the message without notice or information of any fact indicating that extraordinary care for speed in its despatch or delivery was important or expected, or that extraordinary or special damages would result from any neglect or want of care or accuracy in performing the service. The message did not import that a sale of any property or business transaction hinged upon the delivery of it. For all the purposes for which the plaintiffs desired the information, the message may as well have been in cipher or an unknown tongue. It indicated nothing to put the defendant on the alert or from which it could be inferred that any special damage or pecuniary loss would ensue upon the non-delivery of it. Whenever special or extraordinary damages, such as would not naturally or ordinarily follow a breach, have been awarded for the non-performance of contracts, whether for the sale or carriage of goods, or for the delivery of messages by telegraph, it has been for the reason that the contract has been made with reference to the particular circumstances known to both, and the particular loss has been in contemplation of both at the time of the making of the contract as a contingency that might follow the non-performance. In other words, the damages given by way of indemnity have been the natural and necessary consequences of the breach of contract in the minds of the parties, interpreting the contract in the light of the circumstances and the knowledge of the parties of the purposes for which it was made, and when a special purpose is known to one party but not to the other, such special purpose will not be taken into account in the assessment of the damages for the breach. The damages in such cases will be limited to those resulting from the obvious purpose of the contract. It will be seen from this case that identically the same considerations are regarded as those which prevail in regard to connecting carriers. When the undertaking of the initial company has been entered into, with a full knowledge of the situation, and it appears from the circumstances that a special undertaking necessarily has resulted, then the company will be bound to respond in damages if there has been a failure of the connecting line.

In the Baldwin case, *supra*, a message had been sent from Ogdensburgh, New York, and delivered to the connecting carrier at Syracuse, properly addressed and directed, and delivered at its destination from the office of the defendant misdirected and addressed to a different name, so that it did not reach the person for whom it was intended. The court goes on to say that "telegraph companies are not insurers, and do not guarantee the delivery of all messages with entire accuracy and against all contingencies, they do undertake for ordinary care and vigilance in the performance of their duties and to answer for the neglect and omission of duty of their servants or agents. * * * But an error in transcribing the direction and consequent misdelivery, are *prima facie* evidence of neglect and want of care in the operator, and cast the burden upon the company of explaining the error and showing that it occurred without its fault. This is upon the supposition that the message is received unconditionally." In this case the plaintiff had an important real estate transaction on hand, which it was claimed resulted in a loss because of the failure to deliver the message, but the court held that "the loss which would naturally and necessarily result from the failure to deliver the message would be the money paid for its transmission, and no other damages can be claimed upon the evidence as resulting from the alleged breach of duty by the defendant. The plaintiffs have lost the money paid to the Ogdensburgh company, and are entitled to recover it, but the sale of their property at a loss was not in the contemplation of the parties, and the damages resulting therefrom were not the ordinary damages resulting from the breach of duty by the defendants." Had the defendants been fully informed of what there was hinged upon the prompt delivery of the message by the connecting carrier, and had contracted with the plaintiff with their eyes opened to the consequence of a failure to promptly deliver, there would then be no doubt of the right to recover for the loss such a failure would entail. This case is a good illustration of the relationship of connecting carriers.

The principal case is determined from another situation, but the principles are all the same which relate to the right to recover damages. Mental suffering is an element of damages recognized by the courts of Texas and in the principal case, and as there was ample ground upon which to base this element of damage the recovery was proper. The matter being so close in principle to that relating to the relationship of connecting carriers, is easy to understand on

that account. See, in this connection, 54 Barb. (N. Y.) 505; Gulf, etc.,R. Co. v. Baird, 75 Tex. 256; Smith v. Western Union Tel. Co., 84 Tex. 359, 39 Am. & Eng. Corp. Cas. 589; Western Union Tel. Co. v. Lovely (Tex.), 52 S. W. Rep. 563.

The English doctrine that the initial carrier is liable on the entire route (Stevenson v. Montreal Tel. Co., 16 U. C. (Q. B.) 530) prevails in some of the states, and there is no reason for supposing that there would be any change in this respect as between connecting telegraph lines. This seems to be the rule in Tennessee. Louisville & N. Ry. Co. v. Campbell, 7 Heisk. (Tenn.) 253; Louisville, etc.,R. Co. v. Weaver, 9 Lea (Tenn.), 38, 42 Am. Rep. 654; Sumner v. So. Ry. Assoc., 7 Baxt. 345, 32 Am. Rep. 560; Merchants Despatch Transportation Co. v. Block, 86 Tenn. 393, 6 Am. St. Rep. 847.

New Hampshire: Nashua Lock Co. v. Worcester, etc., Ry. Co., 48 N. H. 339, 2 Am. Rep. 265; Gray v. Jackson, 51 N. H. 9, 12 Am. Rep. 1.

Ohio: Baltimore, etc., R. Co. v. Campbell, 36 Ohio St. 647; Brown v. Mott, 22 Ohio St. 149.

Kansas: Berg v. Atchison, etc., R. Co., 30 Kan. 561. But it is held in that case that a carrier may provide that it is not to be responsible as such beyond its own line, and that its liability is to terminate upon a delivery of the goods to the connecting carrier.

Iowa: Mulligan v. Ill. Cent. R. Co., 36 Iowa, 131; Beard v. St. Louis, etc., R. Co., 79 Iowa, 527.

In Illinois there are many decisions: Ill. Cent. R. Co. v. Frankenberg, 54 Ill. 88; Porter v. Chicago R. Co., 20 Ill. 407; Field v. Chicago, etc. R. Co., 71 Ill. 458; Erie R. Co. v. Wilcox, 84 Ill. 239; East St. L. Con. R. Co. v Webash, etc., R. Co., 123 Ill. 594.

Georgia: Moshe v. So. Express Co., 38 Ga. 37; Central R. Co. v. Dwight Mfg. Co., 75 Ga. 609; East Tenn. R. Co. v. Johnson, 85 Ga. 382.

Alabama: Louisville R. Co. v. Meyer, 78 Ala. 597; Montgomery, etc., R. Co. v. Moore, 51 Ala. 394.

JETSAM AND FLOTSAM.

THE AMERICAN BAR ASSOCIATION.

The Twenty-ninth Annual Meeting of the Association will be held at St. Paul, Minnesota, on Wednesday, Thursday and Friday, August 29th, 30th and 31st, 1906. The sessions of the Association will be at 10 o'clock A. M., and 8 o'clock P. M., on Wednesday and Thursday, and 10 o'clock A. M. on Friday. The sessions of the Section of Legal Education will be on Wednesday and Friday, August 29th and 31st, at 3 o'clock P. M. The session of the Section of Patent, Trade-Mark and Copyright Law will be on Wednesday at 3 o'clock P. M. On Tuesday, August 28th, at 8 o'clock P. M., and on Wednesday, August 29th, at 8 o'clock P. M., there will be meetings of the Association of American Law Schools. The Sixteenth Conference of Commissioners on Uniform State Laws will begin its sessions on Saturday, August 25th, at 10 o'clock A. M., being Saturday of the week previous to the meeting of the American Bar Association. All the meetings will be held at the Capitol. The meetings of the Association will be held in the House of Representatives. The Association of American Law Schools and the Section of Legal Education will meet in the Senate Retiring Room. The Section of Patent, Trade-Mark and Copyright Law will meet in the Senate Judiciary Room No. 237. The Commissioners on Uniform State Laws and the General Council will meet in the Senate Chamber, except the meeting of the General Council on Tuesday evening, which will be at the Reception Room in the Hotel Ryan.

PROGRAMME OF THE ASSOCIATION.

Wednesday Morning, 10 o'clock.—The President's Address, by George R. Peck, of Chicago, Illinois, communicating the most noteworthy changes in Statute Law on points of general interest, made in the several States and by Congress during the preceding year. Nomination and election of Members; Election of the General Council; Report of the Secretary; Report of the Treasurer; Report of the Executive Committee.

Wednesday Evening, 8 o'clock.—A paper by Roscoe Pound, of Lincoln, Nebraska, on "The Causes of Popular Dissatisfaction with the Administration of Justice." A paper by John J. Jenkins, Chairman of the Judiciary Committee of the House of Representatives of the United States, on the subject, "Can Congress Transfer to the State its Power to Regulate Commerce?" Discussion upon the subject of the papers read.

Thursday Morning, 10 o'clock. — The annual address, by Alton B. Parker, of New York. Reports of standing committees. (See report of 1905, page 939, giving a memorandum of subjects referred): on Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on International Law; on Grievances; on Obituaries; on Law Reporting and Digesting; on Patent, Trade-Mark and Copyright Law; on Insurance Law; on Uniform State Laws.

Thursday Evening, 8 o'clock.—A paper by Thomas J. Kernan, of Baton Rouge, Louisiana. A paper by General George B. Davis, Judge Advocate-General, U. S. Army. Discussion upon the subject of the papers read. Reports of Special Committees. (See Report of 1905, page 940): on Classification of the Law; on Indian Legislation; on Penal Laws and Prison Discipline; on Federal Courts; on Industrial Property and International Negotiation; on Title to Real Estate; on Code of Legal Ethics; Delegates to Copyright Congress.

Friday Morning, 10 o'clock.—Nomination of officers; unfinished business; miscellaneous business; election of officers.

MISCELLANEOUS ARRANGEMENTS.

The annual dinner will be given by the association to its members and delegates at the Auditorium in Minneapolis, at 8 o'clock on Friday evening. Parlor No. 4 in the Hotel Ryan, St. Paul, will be open as a reception room for the use of members of the association and delegates during the meeting. Members and delegates are particularly requested to register their names as soon as convenient after their arrival in the register of the association, which will be kept in the reception room at the Hotel Ryan in order that the list of those present may be complete. During the sessions of the association the register will be kept at the capitol. The members of the general council will meet in the reception room at the Hotel Ryan, on Tuesday evening, August 28th, at 9:30 o'clock.

The attention of the various standing committees is called to the provision of the By-Laws by which such committees are required to meet every year, at such hour as their respective chairmen may appoint, on the day preceding the annual meeting, at the place where the same is to be held. All such committees will also meet at the reception room at the hotel at 9:30

o'clock on Tuesday evening, August 28th, for further consultation. It is desirable that all nominations of new members, as far as possible, should be submitted to the General Council at its first session on Tuesday evening. The mode of nomination will be found below, and forms will be furnished by the Secretary, if desired. Any nomination put in proper form and sent to the Secretary before the meeting will be submitted to the General Council at its first session. The Executive Committee will act on any nominations for election made under the last clause of Article IV., if sent to the Secretary prior to August 1st. Forms will be furnished on application.

RECEPTION AND ENTERTAINMENTS.

A reception will be given at the State Capitol on Wednesday evening, at 9:30 o'clock, by the members of the bar and citizens of St. Paul, to the members of the American Bar Association and their wives and families. On Thursday afternoon a luncheon will be given at the Town and Country Club, going by trolley car and returning by boat on the river, stopping at Minnehaha Falls. On Saturday an excursion will be given to Lake Minnetonka, starting from St. Paul about 10:00 o'clock, and after luncheon at the Lafayette Club, returning about 4:00 o'clock.

SECTION OF LEGAL EDUCATION.

The sessions will be held on Wednesday and Friday, August 29th and 31st, 1906, in the Senate Retiring Room at the Capitol.

Wednesday afternoon, 3 o'clock.—Address of the Chairman of the Section, William Draper Lewis, Dean of the Law Department of the University of Pennsylvania. A paper by Charles M. Hepburn, Dean of the Law School of Indiana University, on "The State of Legal Education in the United States." Discussion of the papers presented.

Friday afternoon, 3 o'clock.—A paper by James E. Young, Director of the Wharton School of the University of Pennsylvania, on "The Knowledge of Business Conditions as a Prerequisite to the Study of Law." A paper by E. A. Gilmore, of the College of Law of the University of Wisconsin, on "The Relation Between Universities and Professional Instruction." Discussion of the papers presented.

SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW.

The sessions will be held on Wednesday afternoon at 3 o'clock, in the Senate Judiciary Committee Room, No. 237, at the Capitol. Address of the Chairman, Robert S. Taylor, of Fort Wayne, Indiana. Papers will be read and a discussion on the papers will follow.

ASSOCIATION OF AMERICAN LAW SCHOOLS.

The sessions will be held on Tuesday and Wednesday evenings, August 28th and 29th, 1906, at 8 o'clock, in the Senate Retiring Room at the Capitol.

Tuesday evening, 8 o'clock.—Address of the President of the Association of American Law Schools, Henry Wade Rogers, Dean of the Law School of Yale University. A paper by Clarence D. Ashley, Dean of the New York University Law School. A paper by Professor Floyd R. Mechem, University of Chicago Law School. Discussion of the papers presented.

Wednesday evening, 8 o'clock.—Business meeting of the Association.

CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

The Sixteenth Conference will be held in the Capitol, St. Paul, Minnesota, beginning Saturday, August 25th, 1906, at 10 o'clock A. M. The members of the Committee on Uniform State Laws of the American Bar Association, as well as all members of the American Bar Association are cordially invited to attend and to take part in the preparation, examination and discussion of Uniform Laws relating to Sales, Warehouse Receipts, Bills of Lading and Partnerships.

A LAW TO PROTECT BIRDS.

The threatened extermination of all beautiful birds in this country in order to satisfy the demands for ornamental millinery has led to the enactment in several states of greatly needed laws for the protection of wild birds. Commissioner Whipple of the New York State Forest, Fish and Game Department, has recently served noticed through the press to the milliners of the state, retail and wholesale, that his department intends to use every legitimate means to enforce the law prohibiting the possession or sale of the bodies or feathers of wild birds, whether taken in this state or elsewhere. The penalty for each violation of the law is $60 fine, and an additional $25 for each bird, or part thereof, sold, offered for sale, or possessed. This law seems to be sweeping enough to constitute an efficacious remedy so far as the state of New York is concerned. All the added beauty that can be given to the creations of milliners for the adornment of ladies is not enough to compensate a civilized people for the infinite loss to every-day life of many millions of people, if the beautiful plumage and graceful flight of the birds should disappear, and their twitter and song be silenced. States which have no such laws may well adopt them, and all that have them should secure their enforcement.—*Case and Comment.*

CORRESPONDENCE.

PLEADING CUSTOM IN AN ACTION FOR NEGLIGENCE.

Editor of the Central Law Journal:

As an old practitioner and subscriber to the CENTRAL LAW JOURNAL, I have noticed with interest your discussion of the decision in the case of Brunke v. Telephone Company, lately rendered by the Kansas City Court of Appeals. The question of law which you discuss, important as it is, seems to me of subordinate interest as compared with the question of ethics, editorial or professional, involved. I note that a correspondent in your issue of July 6th takes you severely to task for your criticism of that decision. I differ with my brother Brennan as to the propriety of your course in this matter, and trust that you will not allow his vigorous language to discourage you from the freest exercise of what I conceive to be not merely your privilege, but your plain duty. Mr. Brennan very justly remarks that "a legal journal is responsible to the public, notwithstanding its private ownership." Precisely. And it is this very *quasi* public capacity that imposes upon you the duty of independent criticism of all judicial utterances which are put forth as authoritative expositions of the law. It seems hardly consistent, therefore, in Mr. Brennan to style your responsibility in this connection "a career of self-constituted censorship." As a subscriber I feel, for instance, that I am entitled to know the truth as to your editorial views upon any legal question you may assume to discuss. You owe to me, I think, as to all your other subscribers, a frank and fearless expression of opinion. I do not pay for and I do not

care for any other. I do not believe that either the efficiency or the independence of the judiciary is promoted by treating the utterances of the bench as though its incumbents were hedged about with some sort of a divinity that forbade criticism even of the freest and frankest character. The JOURNAL has, I believe, many constituents who, though they have no voice nor vote in the selection of the incumbents of the Kansas City bench, are yet directly and substantially interested in the decisions of that highly respected court. It so happens that within my personal experience within the past few months I have had occasion to realize this fact. For in a cause of some importance pending in the United States Court at Chicago, several dicisions of the Missouri Court of Appeals were quoted and relied upon upon several of the most important points involved. I was so unfortunate as to encounter these decisions as weapons in my adversary's hands. Had I been unable to induce the circuit court of appeals to differ in its views of the law from the Missouri decisions, my client would have suffered defeat. Thus it is that the JOURNAL'S constituents in Illinois, or Wisconsin, or Ohio, or Indana, may be made to feel the adverse influence of an erroneous decision of a Missouri court. I see no reason why we are not interested in and entitled to your editor's free criticism of any decision, whether in Missouri or elsewhere.

Mr. Brennan closes with the admonition: "Remember the muck-rake." He seems to be unhappy in his allusions. The distinguished author of that current expression, at least as applied to modern conditions, would certainly not be willing to accept such an application of his phrase as just or correct. For, as every citizen knows, Mr. Roosevelt is of all men the last to hesitate at calling a spade a spade. And among the very latest instances of his conception of duty in this regard are his recent well known comments upon the official utterances of another coequal department of the federal government, and that department the judiciary. It is evident that the president of the United States would hardly sanction any dispositon to weak or servile complaisance in the discussion of any public acts, even judicial, which an editor of a legal periodical might honestly deem prejudicial to the public good. WM. RITCHIE.

Chicago, Ill.

HUMOR OF THE LAW.

A certain firm of attorneys had won for themselves a rather savory reputation for the wrecking and consuming of bankrupt estates entrusted to them. A suitor who had been advised to employ one of the members in a pending suit, met a friend who was formerly a client of the combine and inquired concerning their standing, and during the conversation remarked, "Mr. B and Mr. C are partners, are they not?" "Partners," indignantly replied his friend. "Partners! No, sir, they're not, they're accomplices, sir, accomplices. Have nothing to do with them."

One of the witnesses called in a Chicago divorce case last year was a highly respected clergyman in the Windy City. According to one of the counsel in the case, the following conversation took place between the judge and the minister. Said his Honor:

"Doctor Blank, if you were on the bench in my stead, and were acquainted with all the circumstances of this case, would you grant this divorce?"

"Assuredly I would, your Honor," replied the clergyman, without the least hesitation.

"But," said the judge, "how do you reconcile this assertion with the injunction of Scripture, 'Whom God has joined let no man put asunder?'"

"Your Yonor," responded the minister, with convincing gravity, "I am quite satisfied that the Almighty never joined this couple."—*Harper's Weekly.*

Recently there was tried in Chicago a breach-of-promise suit that awakened much interest in legal circles. Counsel for the plaintiff had begun to read what was alleged to be the proposal of marriage on the part of the defendant. This so-called proposal appeared on a telegraph blank. Turning to the jury, counsel began with "My Darling Marie." At this juncture counsel for the defendant interrupted his colleague at the bar.

"May it please the court, this document, being partly printed and partly written, cannot, by the rules of evidence, be offered in part by plaintiff. Everything on the blank must be read."

Notwithstanding the protest of counsel for the plaintiff that the printed matter had no relevancy with the case—the fact being that the proposal was written on a telegraph blank by accident—the ruling of the court was that everything on the blank should be read. Accordingly the reluctant counsel for plaintiff was forced to read the following:

"There shall be no liability on account of this message unless the same shall be repeated, and then only on condition that the claim shall be made within thirty days in writing." Then after the signature followed: "Yours devotedly, Harry," together with this N. B.: "Read carefully the conditions at the top."

To the delight of counsel for the defendant the jury gave him a verdict.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCIDENT INSURANCE—Scope of Septic Indorsement.—A clause of an accident policy insuring a physician against septic wounds while performing an operation or administering treatment held to extend to the preparation of medicine to be used by a patient.—Central Acc. Ins. Co. v. Rembe, Ill., 77 N. E. Rep. 122.

2. ACCORD AND SATISFACTION—Unliquidated Claims.—Payment by a debtor of a less sum than that claimed by the creditor to be due on an unliquidated amount, when accepted by the creditor, is a satisfaction of the claim.—Snow v. Greisheimer, Ill., 77 N. E. Rep. 110.

3. ACCOUNT—Equity.—The statement merely that it is difficult to ascertain the amounts due without an accounting, the amounts not being mutual or complicated, held insufficient to sustain a bill for accounting by a county against one of its officers.—Hulsey v. Walker County, Ala., 40 So. Rep. 311.

4. ADULTERY—Argument of Counsel.—On trial for adultery charged to have been committed with a married woman, comment upon her refusal to testify held prejudicial error.—Powers v. State, Neb., 106 N. W. Rep. 332.

5. ADVERSE POSSESSION—Quitclaim Deed as Color of Title.—A quitclaim deed which purports to convey the property is as good color of title as a warranty deed.—Waterman Hall v. Waterman, Ill., 77 N. E. Rep. 142.

6. ADVERSE POSSESSION—Taxation.—The fact that one claiming land adversely did not return it for taxation is admissible to rebut his claim of ownership.—Driver v. King, Ala., 40 So. Rep. 315.

7. ALTERATION OF INSTRUMENTS—Change of Date in Bill of Lading.—A change of the date in bills of lading constituted a material alteration, invalidating the bills.—Merchants' Nat. Bank v. Baltimore, C. & R. Steamboat Co., Md., 63 Atl. Rep. 108.

8. ALTERATION OF INSTRUMENTS—Recovery on Unaltered Copy.—Where one copy of a contract executed in duplicate was innocently altered by the holder, he was entitled to recover upon the unaltered copy and introduce parol proof of its contents for that purpose.—Hayes v. Wagner, Ill., 77 N. E. Rep. 211.

9. APPEAL AND ERROR—Bill of Exceptions.—Where, on a writ of error to review a judgment confirming a special tax for a local improvement, there was no bill of exceptions, the objection that there was no petition for the improvement was not reviewable.—Harrigan v. City of Jacksonville, Ill., 77 N. E. Rep. 85.

10. ATTACHMENT—Claims by Third Persons.—Where in attachment a third party interposed a claim, plaintiff in order to make out a *prima facie* case must show that defendant in execution was in possession at the time of the levy by the sheriff.—Ringemann v. Wiggs Bros., Ala., 40 So. Rep. 323.

11. ATTORNEY AND CLIENT—Disbarment.—Employment of laymen by attorneys to procure clients held a misdemeanor warranting disbarment, under Code Civ. Proc. §§ 74, 75.—*In re* Clark, N. Y., 77 N. E. Rep. 1.

12. APPEAL AND ERROR—Estoppel to Allege Error.—Where appellant requested the lower court to charge that the question of the term of his employment was one for the jury, he could not contend that there was no conflict as to the term of his employment.—McDonald v. Ideal Mfg. Co., Mich., 106 N. W. Rep. 279.

13. APPEAL AND ERROR—Harmless Error.—Where the pleadings are made up of a short petition and a general denial, it is not prejudicial error, after having plainly stated the issues, to incorporate the petition in the instructions.—H. R. Kamm & Co. v. W. E. Sloan & Co., Kan., 83 Pac. Rep. 1103.

14. APPEAL AND ERROR—Questions Reviewable.—Where all the evidence was not contained in the bill of exceptions, a question not raised at the trial on which evidence other than that reported might have been offered, would not be reviewed on appeal.—Gadd v. City of Detroit, Mich., 106 N. W. Rep. 210.

15. APPEAL AND ERROR—Ruling on Demurrer.—Where it appears that the verdict and judgment are grounded on a paragraph of the complaint, as to which there is no objection, the overruling of a demurrer to another paragraph of the complaint is not reversible error.—Bedford Quarries Co. v. Turner, Ind., 77 N. E. Rep. 58.

16. ASSISTANCE, WRIT OF—Persons Against Whom Writ May Issue.—Under Rev. St. 1898, § 2829, the omission of the seal of the court on a writ of assistance is an irregularity which is waived by the appearance of the occupant and motion by him to set aside the writ on its merits.—Prahl v. Rogers, Wis., 106 N. W. Rep. 287.

17. BANKRUPTCY—Conveyance by Bankrupt.—Bill by trustee in bankruptcy to recover a leasehold transferred by bankrupt to his wife in consideration of money loaned held properly dismissed.—Vowinkel v. Moser, Pa., 63 Atl. Rep. 130.

18. BENEFIT SOCIETIES—Construction of By-Laws.—A subsequent by law of a fraternal benefit association will be strictly construed against the association, and, if passed in contravention of the statute governing such associations, will be held void.—Lange v. Royal High landers, Neb., 106 N. W. Rep. 224.

19. BILLS OF LADING—Custom of Altering Dates.—A custom to alter dates on bills of lading held inadmissible where its application would effect an alteration of the true date of the instrument.—Merchants Nat. Bank v. Baltimore, C. & R. Steamboat Co., Md., 63 Atl. Rep. 108.

20. BOUNDARIES—Fee in Highway.—Where land was conveyed by courses and distances without mentioning a street by which the same was bounded, and it turned out in fact that it was bounded by a street, the fee to the center of the street will be deemed to be included.—Van Winkle v. Van Winkle, N. Y., 77 N. E. Rep. 33.

21. BRIDGES—Presumptions as to Safety.—A party attempting to cross a bridge, in the absence of notice to the contrary or facts sufficient to put him on inquiry, has a right to assume that it is reasonably safe.—Central City v. Morquis, Neb., 106 N. W. Rep. 221.

22. CANCELLATION OF INSTRUMENTS—Refunding Money Paid.—On setting aside a conveyance on the ground of the mental incapacity of the grantor, the grantee held entitled to interest on the money paid.—Peck v. Bartelme, Ill., 77 N. E. Rep. 216.

23. CARRIERS—Bills of Lading.—A carrier held guilty of a breach of duty in delivering goods without requiring a surrender of bills of lading as provided in such bills.—Merchants' Nat. Bank v. Baltimore, C. & R. Steamboat Co., Md., 63 Atl. Rep. 108.

24. CARRIERS—Instruction as to Care Required Toward Passengers.—An instruction rendering a carrier liable for injuries to a passenger caused by the "slightest negligence" was proper.—Chicago City Ry. Co. v. Shaw, Ill., 77 N. E. Rep. 139.

25. CARRIERS—Loss of Baggage.—Steamship company held liable to passenger for hand baggage delivered to company's baggage master and lost, notwithstanding limitation in passage ticket as to liability for loss of baggage.—Holmes v. North German Lloyd S. S. Co., N. Y., 77 N. E. Rep. 21.

26. CARRIERS—Wrongful Delivery.—A *bona fide* transferee of bills of lading held entitled to recover damages against the carrier for wrongful delivery of the goods to the pledgor without requiring surrender of the bills.—Chesapeake S. S. Co. v. Merchants' Nat. Bank, Md., 63 Atl. Rep. 113.

27. CHAMPERTY AND MAINTENANCE—Contract of Attorney.—Where parties enter into a champertous agreement they cannot recover on a preliminary negotiation merged into such void written agreement, or on a *quantum meruit*.—Moreland v. Devenney, Kan., 83 Pac. Rep. 1097.

28. CHATTEL MORTGAGES—Waiver of Liens.—An agreement by lienholders for the waiver of conflicting claims held not affected by an attempted repudiation by one of the parties.—Holden & Martin v. Gilfeather, Vt., 63 Atl. Rep. 144.

29. CONSPIRACY—Evidence.—On a prosecution for conspiracy to defraud by false pretenses, evidence to prove a conspiracy to defraud any person other than prosecutor is inadmissible.—Lawrence v. State, Md., 63 Atl. Rep. 96.

30. CONSPIRACY—Liability of Conspirators.—When a conspiracy is once entered into, each conspirator is liable for all the acts of his co-conspirators done in furtherance of the objects of the conspiracy.—Franklin Union, No. 4, v. People, Ill., 77 N. E. Rep. 176.

31. CONSTITUTIONAL LAW—Statutes of Foreign State.—A court will not declare unconstitutional a foreign statute, in the absence of such construction by courts of that state, where no question of public policy is involved.—McDowell v. Lindsay, Pa., 63 Atl. Rep. 130.

32. CONTEMPT—Persons Liable.—A corporation other than a municipal corporation may be adjudged guilty of contempt in case of a willful violation of an injunction by it, and may be punished by fine.—Franklin Union, No. 4, v. People, Ill., 77 N. E. Rep. 176.

33. CONTRACTS—Actions for Breach.—A petition in an action against a husband for necessaries furnished his wife held to state a cause of action on an implied contract.—Baker v. Oughton, Iowa, 106 N. W. Rep. 272.

34. CORPORATIONS—Action by Stockholders.—Complaint in action by stockholder against a corporation and two other defendants stated cause of action in behalf of the corporation, but, failing to state demand on corporation to sue, held subject to demurrer.—O'Connor v. Virginia Passenger & Power Co., N. Y., 76 N. E. Rep. 1082.

35. CORPORATIONS—Employing Attorney.—The mere fact that one was a stockholder in a corporation did not give him authority to employ an attorney to defend an action against the corporation.—Tabor v. Bank of Leadville, Colo., 83 Pac. Rep. 1060.

36. CORPORATIONS—Foreign Corporations.—When a foreign corporation maintains a regular place of business in the state, a service of process at such place on its agent held good if the service would be good against a domestic corporation; Acts 1894, authorizing service on the secretary of state, providing only an additional mode of service.—*In re* Curtis, La., 40 So. Rep. 334.

37. CORPORATIONS—Misappropriation of Funds.—Where the officers of a corporation took funds as salaries to which they were not entitled, they could not defend their action on the ground that the business of the corporation had increased.—Jacobson v Brooklyn Lumber Co., N. Y., 76 N. E. Rep. 1075.

38. CORPORATIONS—Officer's Authority to Fix Compensation.—That the treasurer of a corporation and her daughter were directors of a corporation held not to invalidate as against the trustees of the corporation in bankruptcy the action of the board in fixing the treasurer's salary.—Fillebrown v. Heywood, Mass., 77 N. E. Rep. 45.

39. CORPORATIONS—Purchase of Stock.—Purchaser of stock in a West Virginia corporation paying corporation less than par value held not liable for the difference between the price paid and the par value.—McDowell v. Lindsay, Pa., 63 Atl. Rep. 130.

40. COUNTIES—Negligence of Officers.—A county is not liable in damages for the negligent acts of its officers unless made so by statute.—Hopper v. Douglas County, Neb., 106 N. W. Rep. 330.

41. CRIMINAL EVIDENCE—Conflicting Evidence.—A conviction on conflicting evidence and approved by the trial court will not be set aside as not justified by the evidence, unless there is a reasonable doubt of guilt.—Barrett v. People, Ill., 77 N. E. Rep. 224.

42. CRIMINAL EVIDENCE—Evidentiary Circumstances.—Evidentiary circumstances relied on to establish any necessary element in a criminal prosecution must be shown to exist to the satisfaction of the jury with the same certainty as the ultimate object of inquiry is required to be.—Schwantes v. State, Wis., 106 N. W. Rep. 237.

43. CRIMINAL EVIDENCE—Homicide.—Testimony as to statements of a third person in the presence of accused as to his connection with the crime held improperly admitted.—Commonwealth v. Johnson, Pa., 63 Atl. Rep. 134.

44. CRIMINAL EVIDENCE—Motion to Strike Out.—Where in a criminal case a part of the evidence given by witness was competent, a motion to strike out his entire testimony was properly denied.—Mash v. People, Ill., 77 N. E. Rep. 92.

45. CRIMINAL EVIDENCE—Time of Occurrence.—A person of mature years may testify from his best judgment as to the time of day when a particular circumstance happened, or the time occupied by the occurrence.—Schwantes v. State, Wis., 106 N. W. Rep. 237.

46. CRIMINAL LAW—Declarations of Conspirators.—The acts and declarations of each co-conspirator after the formation of the conspiracy and prior to its consummation, made during the progress of the execution of the object of the conspiracy, is admissible against the others.—Lawrence v. State, Md., 63 Atl. Rep. 96.

47. CRIMINAL TRIAL—False Pretenses.—In a prosecution for cheating by false pretenses, it is proper, for the purpose of showing motive and intent, to allow proof of other false pretenses made at or about the same time.—State v. Gibson, Iowa, 106 N. W. Rep. 270.

48. CRIMINAL TRIAL—Fining Defendant's Counsel for Contempt. Fining defendant's counsel in open court for contempt in disregarding repeated admonitions as to argument held not error.—Spears v. People, Ill., 77 N. E. Rep. 112.

49. CRIMINAL TRIAL—Habits of Deceased.—Where it is not shown that the assaulted was drunk on the occasion of his difficulty with defendant, on a prosecution for assault with intent to murder, evidence as to his habit in getting drunk when he came to town is irrelevant.—Teague v. State, Ala., 40 So. Rep. 312.

50. CRIMINAL TRIAL—Proof of Conspiracy.—In order to prove a conspiracy, it is not necessary to prove that the parties actually came together and agreed on the purpose, but it may be proved by circumstantial evidence.—Lawrence v. State, Md., 63 Atl Rep. 96.

51. CRIMINAL TRIAL—Reference to Prior Convictions.—Admissions of records of prior judgments against accused without identifying him as person named held not error, where point was not raised at close of state's case.—State v. Smith, Iowa, 106 N. W. Rep. 187.

52. DAMAGES—Direct or Remote Consequences of Injury.—Plaintiff in action for interruption to business held not entitled to recover damages for loss of business subsequent to the day of the acts complained of.—Botkin v. Miller, Mass., 77 N. E. Rep. 49.

53. DEDICATION—Acquiescence in Ownership.—Acquiescence by railroad in occasional use of its premises by public held not to divest it of its title.—Sioux City v. Chicago & N. W. Ry. Co., Iowa, 106 N. W. Rep. 183.

54. DEEDS—Agreement to Support Grantor.—A deed in consideration of the support of the grantors by the grantee cannot be avoided or set aside because the grantee is prevented by death from continuing to perform his agreement.—Calkins v. Calkins, Ill., 77 N. E. Rep. 102.

55. DEEDS—Consideration.—A deed acknowledging the payment of consideration cannot be contradicted by parol for the purpose of invalidating the deed or impairing its legal effect.—Stannard v. Aurora, E. & C. Ry. Co., Ill., 77 N. E. Rep. 254.

56. DEEDS—Reservations in Deed.—A reservation in a deed expressed in language requiring explanation held controlled by the grant, which was expressed in language requiring no explanation.—Wilson v. Hoffman, La., 40 So. Rep. 328.

57. DESCENT AND DISTRIBUTION—Action by Heirs to Set Aside Mortgages.—Heirs of an intestate may sue to set aside mortgages executed by intestate where administrator refuses to sue.—Marsh v. Marsh, Vt., 63 Atl. Rep. 159.

58. DISORDERLY HOUSE—Age of Prosecutrix.—In a prosecution for permitting an unmarried female under 18 years of age to board in a house of prostitution, evidence held sufficient to establish prosecutrix' age.—Mahs v. People, Ill., 77 N. E. Rep. 92.

59. DIVORCE—Construction as to Decree for Alimony.—A decree awarding alimony held not to require the husband to keep the house he was ordered to convey to the wife in fee in repair after expending the sum provided for in the decree for such purpose.—Wickes v. Wickes' Exrs., Ill., 77 N. E. Rep. 101.

60. DRAINS—Right to Use.—Equity will enjoin an act which is not a nuisance, but which, if long continued, may become the foundation of an adverse right.—Kenilworth Sanitarium v. Village of Kenilworth, Ill., 77 N. E. Rep. 226.

61. EASEMENTS—Acquiescence.—Acquiescence for a long term of years between adjoining owners in the mutual user of a driveway held not to create title in the land of the other in either party.—Wilkinson v. Huntzel, Mich., 106 N. W. Rep. 207.

62. EQUITY—Clean Hands.—The unlawful combination of complainant and others to enhance the price of coal, in violation of Comp. Laws 1898, §§ 11,378, 11,379, held to be considered on the question of complainant coming into court with clean hands.—Baker v. City of Grand Rapids, Mich., 106 N. W. Rep. 208.

63. EQUITY—Cloud on Title.—A bill in equity held not maintainable for the sole purpose of removing clouds from the title to certain property, where the bill showed that the complainant was not entitled to any relief on the other grounds alleged.—Brownback v. Keister, Ill., 77 N. E. Rep. 75.

64. EQUITY—Decree as Pleas—Where complainant in equity filed pleas to the cross-bill and the cause was submitted without objection, complainant, having proved pleas, held entitled to a decree as against the cross bill.—Moody v. Atkins, Ala., 40 So. Rep. 305.

65. EQUITY—Inadequacy of Legal Remedy.—The probate court cannot reach property which an intestate has been fraudulently induced to convey, and consequently equity has jurisdiction to grant appropriate relief.—Marsh v. Marsh, Vt., 63 Atl. Rep. 159.

66. EQUITY—Jurisdiction in Contest of Will.—Equity has no inherent jurisdiction to entertain a bill to contest a will.—O'Brien v. Bonfield, Ill., 77 N. E. Rep. 167.

67. EQUITY—Newly Discovered Evidence.—In an affidavit in support of a motion to refer a cause, a statement that movant has discovered other material evidence is of no avail in the absence of a statement of the character of that evidence.—Matthews v. Whitethorn, Ill., 77 N. E. Rep. 89.

68. ESTOPPEL—Bona Fide Purchaser.—Where plaintiff's grantor was estopped from asserting any title to land as against defendant, and plaintiff knew the facts which estopped his grantor, he acquired no title by a quitclaim deed which he could assert against defendant.—Comstock v. Robertson, Kan., 83 Pac. Rep. 1104.

69. ESTOPPEL—Inconsistent Positions.—City held estopped to assume a position in certain litigation inconsistent with that assumed by it in prior litigation.—Sioux City v. Chicago & N. W. Ry. Co., Iowa, 106 N. W. Rep. 183.

70. ESTOPPEL—Laches.—One who, knowing that another claimed title to certain premises and was improving the same, failed for 10 years to assert any interest therein, was estopped from thereafter so doing.—Lewis v. Sherman Bros., Iowa, 106 N. W. Rep. 183.

71. EVIDENCE—Action to Recover Rent.—In an action to recover rent under a written lease expiring before suit was brought, evidence held competent to show in defense of the suit full performance by both sides of the contract as modified by an oral agreement.—Snow v. Griesheimer, Ill., 77 N. E. Rep. 110.

72. EVIDENCE—Private Documents.—The common-law rule that a document of a public nature may be proved by copy without production of the original does not apply to documents of a private nature.—Clement v. Graham, Vt., 63 Atl. Rep. 146.

73. EVIDENCE—Relevancy.—Where a landowner sued to abate certain structures erected in a right of way in which he had an easement, held not error to exclude certain testimony in relation to the occupancy by other persons of the right of way in question.—McLean v. Llewellyn Iron Works, Cal., 83 Pac. Rep. 1082.

74. EVIDENCE—Res Gestæ.—A memorandum of a contract made by defendant in plaintiff's presence when the contract was made held admissible as *res gestæ*.—Rogers v. Krumrei, Mich., 106 N. W. Rep. 279.

75. EVIDENCE—Value of Land.—In condemnation proceedings, evidence of voluntary sales of other lands held inadmissible, unless the lands so sold were similar in locality and character to the lands in question.—Chicago & St. L. R. Co. v. Kline, Ill., 77 N. E. Rep. 229.

76. EXECUTORS AND ADMINISTRATORS—Acts of Co-Executor.—A surviving executor cannot recover against the sureties of a deceased co-executor the costs of an action brought by the heir to compel the surviving executor to make good the default of the co-executor.—Hewlett v. Beede, Cal., 83 Pac. Rep. 1086.

77. EXECUTORS AND ADMINISTRATORS—Claims.—The running of the statute of limitations as against an heir's claim against an administratrix' estate for the proceeds of the land sold to pay debts, because of the misdescription in the proceedings, held not suspended.—Cunningham v. Cunningham's Estate, Ill., 77 N. E. Rep 95.

78. EXECUTORS AND ADMINISTRATORS—Filing Claims.—Under the express provisions of Code, § 3349, a claim against a decedent's estate is barred unless filed and notice thereof is served within 12 months from the giving of notice of the issuance of letters of administration.—Mosher v. Goodale, Iowa, 106 N. W. Rep. 195.

79. EXECUTORS AND ADMINISTRATORS—Jurisdiction of Equity.—A court of equity has jurisdiction to authorize the conversion of property, contrary to the plan of the testator, necessary to preserve the estate, but not merely to further a better plan.—Johnson v. Buck, Ill., 77 N. E. Rep. 168.

80. EXECUTORS AND ADMINISTRATORS—Sale of Equity in Mortgaged Premises.—The sale of the equity of an intestate in mortgaged premises under a general license of the probate court does not establish the validity of the mortgages.—Marsh v. Marsh, Vt., 63 Atl. Rep. 159.

81. EXPLOSIVES—Joint Tort Feasors.—Where a house was injured by negligence in blasting on an adjoining lot, all persons engaged in the blasting are joint tort-feasors, and liable for injuries caused thereby.—Page v. Dempsey, N. Y., 77 N. E. Rep. 9.

82. FALSE PRETENSES—Indictment.—In a prosecution for cheating by false pretenses, it is not necessary to prove that the amount of money obtained by defendant was precisely the same as that alleged in the indictment.—State v. Gibson, Iowa, 106 N. W. Rep. 270.

83. FIRE INSURANCE—Action of Appraiser.—A refusal to set aside an award on appraisal under a fire policy on the ground that the arbitrators did not consider insured's books held proper.—Tyblewski v. Svea Fire & Life Assur. Co., Ill., 77 N. E. Rep. 196.

84. FIRE INSURANCE—Payment of Premium.—Where plaintiff pleads payment of premium and the court charges that such payment must be established, the requirement is not satisfied by evidence of a waiver or postponement of the time of payment.—Shoemaker v. Commercial Union Assur. Co., Neb., 106 N. W. Rep. 316.

85. FIRE INSURANCE—Person Insured.—A fire insurance policy is not void because payable to the estate of a deceased person.—Norwich Union Fire Ins. Co. v. Prude, Ala., 40 So. Rep. 322.

86. FISH—Title to Oysters.—Title to oysters planted on land under water granted for that purpose to another (Laws 1887, p. 797, ch. 584), held exclusive in the person who plants them, where the grantee fails to comply with statutory requirements.—Vroom v. Tilly, N. Y., 77 N. E. Rep. 24.

87. FRAUD—Measure of Damages.—In action to recover for false representations inducing purchase of realty, exclusion of evidence tending to show that the representations caused no damage is erroneous.—Ettlinger v. Weil, N. Y., 77 N. E. Rep. 31.

88. FRAUD—Nature of Representations.—False representations of fact concerning an article sold must, in order to be actionable, be relied upon by the purchaser, and must be of such a character as to justify the purchaser in relying on them.—J. H. Clark Co. v. Rice, Wis., 106 N. W. Rep. 231.

89. FRAUD—Partnership Settlement.—A partner seeking a recovery of money paid to a copartner after a firm settlement based on the copartner's fraud held bound to prove the fraud.—Devereux v. Peterson, Wis., 106 N. W. Rep. 249.

90. FRAUDS, STATUTE OF—Agreement Between Lienholders.—An agreement between lienholders for the release of their respective claims on chattels held not a sale of goods within the meaning of the statute of frauds rendering parol evidence of the agreement inadmissible.—Holden & Martin v. Gilfeather, Vt., 63 Atl. Rep. 144.

91. FRAUDS, STATUTE OF—Guaranty as to House Rent.—A contract by which defendants as plaintiff's agents guaranteed to rent her house for $35 per month less a commission of 5 per cent. held not within the statute of frauds.—Hewes & Booth v. Loveman, Ala., 40 So. Rep. 303.

92. FRAUDS, STATUTE OF—Parol Modification of Written Contract.—A subsequent oral contract modifying one which the statute of frauds requires to be in writing will be upheld if executed.—Lucas v. County Recorder of Cass County, Neb., 106 N. W. Rep. 217.

93. FRAUDS, STATUTE OF—Sufficiency of Memorandum.—A writing that neither names the parties to the contract nor describes them is not sufficient as a memorandum under the statute of frauds.—Frahm v. Metcalf, Neb., 106 N. W. Rep. 227.

94. GUARDIAN AND WARD—Attainment of Majority.—Where a guardian sued to collect a note belonging to his wards, and pending suit the wards became of age, they were entitled to be substituted as plaintiffs.—Shattuck v. Wolf, Kan., 83 Pac. Rep. 1093.

95. HIGHWAYS—Obstruction.—In an action against a highway commissioner for removing fence after order on plaintiff to remove same as an encroachment on the highway, the order held no evidence of such encroachment.—Labo v. Asam, Mich., 106 N. W. Rep. 281.

96. HOMICIDE—Committing Felony.—Killing of a policeman held not done by a person engaged in the commission of or in an attempt to commit a felony within Pen. Code, § 183.—People v. Huther, N. Y., 77 N. E. Rep. 6.

97. HOMICIDE—Reasonable Doubt.—Where the body of the victim was destroyed, it is not necessary to establish beyond a reasonable doubt the precise means by which the death was produced.—Schwantes v. State, Wis., 106 N. W. Rep. 237.

98. HOMICIDE—Reputation of Defendant.—Testimony that witness knew defendant's reputation for peace, and that it was good, should not be excluded, though he never heard anything said about her up to the time of the present trouble.—Johnson v. State, Miss., 40 So. Rep. 324.

99. INFANTS—Sale of Real Estate.—An order sustaining a sale of real estate for the purpose of conserving a minor's interest therein held contrary to the minor's interest and unsustainable.—Johnson v. Buck, Ill., 77 N. E. Rep. 163.

100. INJUNCTION—Labor Unions.—A fine of $1,000, imposed upon a labor union for flagrant and repeated violations of an injunction restraining it from interfering with nonunion employees and their employers, was not excessive.—Franklin Union, No. 4, v. People, Ill., 77 N. E. Rep. 176.

101. INTOXICATING LIQUORS—Consent of Property Owners.—Rear door of a city dwelling held not an entrance to a building within Liquor Tax Law, Laws 1896, p. 60, ch. 112, § 17, subd. 8, requiring consent of owners of dwelling houses within 200 feet of a proposed saloon.—McDougal v. Malaghan, N. Y., 77 N. E. Rep. 12.

102. INTOXICATING LIQUORS—Sale to Minors.—A sale of liquor to one not identified as being of full age held *prima facie* illegal without proof that the minor was unmarried.—State v. Mulhern, Iowa, 106 N. W. Rep. 267.

103. JUDGMENT—Persons Who May Plead.—Any person holding municipal improvement warrants held entitled to plead any former adjudication holding assessments made to pay for the work on account of which warrants were issued invalid.—Waldron v. City of Snohomish, Wash., 83 Pac. Rep. 1106.

104. JUDGMENT—Res Judicata.—A decree fixing the status of a series of notes secured by a single mortgage held binding on one who in a subsequent action attempts to avoid the effect of the decree.—Preston v. Morseman, Neb., 103 N. W. Rep. 320.

105. JURY—Competency of Alien.—Where an alien serves on a jury without objection, his incompetency is waived.—Schwantes v. State, Wis., 106 N. W. Rep. 237.

106. JUSTICES OF THE PEACE—Change of Venue.—It is too late to demand a change of venue in a justice court after a demurrer to the complaint has been overruled.—Walker v. Maronda, N. Dak., 106 N. W. Rep. 296.

107. LANDLORD AND TENANT—Damages from Poor Husbandry.—Under Landlord and Tenant Act (Hurd's Rev. St. 1903, p. 1178, ch. 80, §§ 16, 31) held that damages sustained by a landlord by reason of poor husbandry on the part of the tenant could not be recovered by means of distress.—Bates v. Hallinan, Ill., 77 N. E. Rep. 115.

108. LANDLORD AND TENANT—Limitations.—Limitations against an action of forcible entry and detainer against a tenant holding at sufferance begin to run against the landlord on the termination of the tenancy.—Clark v. Tukey Land Co., Neb., 106 N. W. Rep. 328.

109. LIBEL AND SLANDER—Indictment.—An indictment for libel in that defendant maliciously published of a certain baker a writing containing the false statement that he refused to recognize the baker's union, containing no averment of facts to show that the words bore a defamatory sense, is insufficient.—State v. O'Hagan, N. J., 63 Atl. Rep. 95.

110. LIBEL AND SLANDER—Knowledge of Hearers.—In an action for slanderously stating that plaintiff, who assisted at the birth of a child, murdered the child, held that the evidence did not show that the hearers knew the child was born dead.—Kloths v. Hess, Wis., 106 N. W. Rep. 251.

111. LICENSES—Revocation.—A conveyance held to operate as a revocation of a license to use a driveway between two adjoining lots.—Wilkinson v. Hutzel, Mich., 106 N. W. Rep. 207.

112. LIFE INSURANCE—Rights of Members where Company Reinsured.—Where the risks of a life insurance company were reinsured, a member in good standing of the transferring company held not bound to notify the transferee company of his claim to membership in it, or to pay or offer to pay dues and assessments.—Bolles v. Mutual Reserve Fund Life Assn., Ill., 77 N. E. Rep. 198.

113. LIFE INSURANCE—Statutes Affecting Representations and Warranties.—A state by enacting that all representations and warranties on which an insurance company proposes to rely shall be attached to the policy does not exceed its power.—Rauen v. Prudential Ins. Co., Iowa, 106 N. W. Rep. 198.

114. LIFE INSURANCE—Validity of Limiting Clause.—A life insurance policy on the life of a boy 14 years old, with a memorandum that the company issuing the policy would not assume any risk until assured arrived at the age of 15 years, held not void.—Security Mut. Life Ins. Co. v. Miller, Neb., 106 N. W. Rep. 229.

115. LIMITATION OF ACTIONS—Effect as to Third Persons.—As between the trust estate and a stranger, the statute of limitations runs as in other cases, and, if the trustee is barred, the *cestui que* trust is equally barred.—Waterman Hall v. Waterman, Ill., 77 N. E. Rep. 142.

116. MANDAMUS—Discretion in Allowance of Writ.—Mandamus to compel a state auditor to permit an inspection of books and papers held not deniable as a matter of discretion.—Clement v. Graham, Vt., 63 Atl. Rep. 146.

117. MANDAMUS—Pleading.—An application for *mandamus* to compel a reassessment to pay special improvement warrants, alleging that the original ordinance was duly passed, held not to preclude relator from providing that the ordinance was void.—Waldron v. City of Snohomish, Wash., 83 Pac. Rep. 1106.

118. MANDAMUS—To Compel Traction Company to Pave Streets.—*Mandamus* is the proper remedy for enforcing performance by a traction company of its duty to pave a street under an ordinance granting the right to locate tracks.—Borough of Rutherford v. Hudson River Traction Co., N. J., 63 Atl. Rep. 84.

119. MASTER AND SERVANT — Assumption of Risk.—Servant whose duty it was to remove iron scraps and shavings held to have no right to complain of their presence as negligence of the master, contributing to his injury.—Beardsley v. Murray Iron Works Co., Iowa, 106 N. W. Rep. 180.

120. MASTER AND SERVANT—Contributory Negligence.—A station agent held required, on notice of construction of switch near the station, to inspect the same, so that he could not recover for injuries by falling into an excavation made in connection therewith, discoverable by inspection.—Wood v. New York Cent. & H. R. R. Co., N. Y., 77 N. E. Rep. 27.

121. MASTER AND SERVANT—Fellow Servants.—Whether servants in the employ of the same master are fellow servants within the rule exempting the master from liability for the injury of one through the negligence of another held a question of fact.—Illinois Steel Co. v. Zimekowski, Ill., 77 N. E. Rep. 190.

122. MASTER AND SERVANT—Injury to Railway Brakeman.—The occurrence of a collision between trains injuring a brakeman on one of them does not create a presumption of negligence on the part of the railway company, but negligence must be proved.—Southern Indiana Ry. Co. v. Baker, Ind., 77 N. E. Rep. 64.

123. MASTER AND SERVANT—Negligence in Lowering Cage at Mine.—In an action by a servant for injuries received through the lowering of a cage in defendant's mine at an excessive rate of speed, evidence of previous violations of the statute regulating the speed held admissible.—Joseph Taylor Coal Co. v. Dawes, Ill., 77 N. E. Rep. 131.

124. MASTER AND SERVANT — Obvious Defects.—Whether or not due care on a lineman's part required him to see and avoid contact with exposed splices of the wire was for the jury.—New Omaha Thomson Houston Electric Light Co. v. Rombold, Neb., 106 N. W. Rep. 213.

125. MASTER AND SERVANT—Personal Injuries.—In an action for injuries to a locomotive engineer owing to a train having run upon a switch, certain facts held not sufficient to fasten the opening of the switch upon the members of the crew of plaintiff's train.—Russ v. Central Vermont Ry. Co., Vt., 63 Atl. Rep. 134.

126. MASTER AND SERVANT—Relief Fund Agreements.—An agreement by a railroad employee that he will accept benefits from a relief fund in discharge of any claim which might accrue to him for damages for personal injuries is valid.—Pennsylvania Co. v. Chapman, Ill., 77 N. E. Rep. 248.

127. MASTER AND SERVANT—Safe Place to Work.—In an action by a servant for personal injuries, the burden held to be on plaintiff to show that the place where he worked was unsafe, that he did not know it, and that the master did.—McCormick Harvesting Mach. Co. v. Zakewski, Ill , 77 N. E. Rep. 147.

128. MASTER AND SERVANT — Violation of Statute. — A servant does not assume the risk of a violation by the master of a statutory duty imposed on him for the protection of the servant.—Murphy v. Grand Rapids Veneer Works, Mich., 106 N. W. Rep. 211.

129. MORTGAGES—Accounting. — A second mortgagee in possession held entitled to the amount loaned, taxes and repairs and interest on prior liens paid, with interest, less rents and profits, with interest. — Keeline v. Clark, Iowa, 106 N. W. Rep. 257.

130. MORTGAGES—Assignments of Notes.—A mortgagee may by agreement fix the rights of his assignees of the notes secured by a mortgage to the mortgage security.—Preston v. Morseman, Neb., 106 N. W. Rep. 320.

131. MUNICIPAL CORPORATIONS—Acts of Officers of De Facto Corporation.—The acts of the officers of a *de facto* municipal corporation are binding when such acts would be within the power of such officers if the corporation were one *de jure*.—People v. Pederson, Ill., 77 N. E. Rep. 251.

132. MUNICIPAL CORPORATIONS—Illegal Contracts.—Where a municipal corporation by action *ultra vires* embarks in a scheme which will result in an unlawful expenditure of public funds, any taxpayer can prosecute a *certiorari* to review such action.—Rehill v. Borough of East Newark, N. J., 63 Atl. Rep. 81.

133. MUNICIPAL CORPORATIONS — Supplemental Assessments.—Commissioners' estimate of amount necessary to raise by supplemental assessment to meet the deficiency of an original improvement assessment, when approved by town board of trustees, held *prima facie* proof of such deficiency.—Town of Cicero v. Skinner, Ill., 77 N. E. Rep. 137.

134. NAMES—Use of Junior and Senior.—The word "Junior" or "Jr.," or words of similar import, are ordinarily mere matters of description, and no part of a person's legal name.—Teague v. State, Ala., 40 So. Rep. 312.

135. OFFICERS—Actions Against. — Where municipal officers were sued in their official capacity, any service on them was binding on their successors in office.—Waldron v. City of Snohomish, Wash., 83 Pac. Rep. 1106.

136. PARTITION—Exceptions to Sale.—A telegram filed with the clerk held a sufficient exception to a sale of land in partition to authorize the court to permit amended exceptions to be subsequently filed.—Compton v. McCaffree, Ill., 77 N. E. Rep. 129.

137. PARTNERSHIP—Acts of Partner. — The arrangement between a debtor of a firm and a partner held not binding on the firm in the absence of the copartner's assent thereto.—Dunnett & Slack v. Gibson, Vt., 63 Atl. Rep. 141.

138. PARTNERSHIP—Dissolution.—Partners having dissolved by mutual consent, evidence as to the cause of the dissolution held inadmissible in a suit for an accounting.—McCandless v. Crouse, Ill., 77 N. E. Rep. 202.

139. PARTNERSHIP — Firm Settlement. — A partner, though discharged by a settlement of the firm business of the legal obligation to pay an additional sum to a copartner may recognize a moral obligation to pay it, and if he does so without fraud of the copartner, he cannot recover back the money paid.—Devereux v. Peterson, Wis., 106 N. W. Rep. 249.

140. PARTNERSHIP—Sharing Profits. — An agreement held a contract for services to be paid for by share in the profits of a business, and not to constitute a partnership.—Zuber v. Roberts, Ala., 40 So. Rep. 319.

141. PLEADING—Joint Obligation.—If a party to a joint lease, when sued independently, pleads a general denial, he cannot, after a decision, amend his answer and set up the fact that such contract was joint.—Hoatson v. McDonald, Minn., 106 N. W. Rep. 311.

142 QUIETING TITLE—Pleading.—A bill to cancel a deed as a cloud on title is bad where it alleges that the grantee is in possession of part of the premises covered by the deed.—Stannard v. Aurora, E. & C. Ry. Co., Ill., 77 N. E. Rep. 254.

143. QUIETING TITLE — Right of Action.—Owner of property may maintain a suit to remove cloud against one who has levied on the same as the property of a third person and advertised it for sale.—Spar Consol. Min. Co. v. Casserleigh, Colo., 83 Pac. Rep. 1058.

144. RAILROADS—Injury to Deaf Person.—A deaf person on approaching a railroad crossing is required to be more careful to avoid contributory negligence than a person not so afflicted.—Toledo, P. & W. R. Co. v. Hammett, Ill., 77 N. E. Rep. 72.

145. RAILROADS—Injury to Pedestrian. — A railroad company held only bound to abstain from wantonly injuring a trespasser on the track, and to exercise reasonable care after discovering he was in a perilous situation.—Bartlett v. Wabash R. Co., Ill., 77 N. E. Rep. 96.

146. RAILROADS—Interests in Land.—Certain representations by railroad at the time land for a right of way was conveyed to it held not ground for a cancellation of the deed, in the absence of proof that the representations were false when made.—Stannard v. Aurora, E. & C. Ry. Co., Ill., 77 N. E. Rep. 254.

147. RECEIVERS—Compensation Where Appointment Was Void.—A bank held accountable for reasonable compensation for the services of one who had acted as a receiver for the bank, notwithstanding that the receivership was void.—Tabor v. Bank of Leadville, Colo., 83 Pac. Rep. 1060.

148. RECORDS—Inspection by Taxpayer. — A citizen and taxpayer held entitled to an inspection of claims and vouchers on file in the office of the state auditor as a matter of right.—Clement v. Graham, Vt., 63 Atl. Rep. 146.

149. RECORDS—Province of Examiner.—An examiner of titles for registration occupies to the court in which the application is pending a position similar to that of a master in chancery.—Glos v. Holberg, Ill., 77 N. E. Rep. 80.

150. RELEASE—Repudiation.—One releasing a demand may repudiate the same on showing fraud or mistake, though the demand is disputed and unliquidated.—Rauen v. Prudential Ins. Co., Iowa, 106 N. W. Rep. 198.

151. REMAINDER—Contingent Remainder.—A contingent remainder held not accelerated by a conveyance by the holder of the last outstanding particular estate.—Brownback v. Keister, Ill., 77 N. E. Rep. 75.

152. SALES—Construction.—Contract for the purchase of tire steel held to require plaintiff to furnish steel, not exceeding 14,000 sets, as necessary to keep defendant's stock unimpaired during the year.—Staver Carriage Co. v. Park Steel Co., Ill., 77 N. E. Rep. 174.

153. SPECIFIC PERFORMANCE—Enforcement of Part of Contract.—Where lands of several owners were contracted for as a whole held that one owner was not entitled to enforce as to his tract alone.—Vickers v. City of Baltimore, Md., 63 Atl. Rep. 120.

154. STIPULATIONS—Statement of Facts.—Where a case is tried on an agreed stipulation of facts and evidence, the jury should consider all the evidence, though part is inconsistent with the statement of facts.—Hunt v. Van Burg, Neb., 106 N. W. Rep. 329.

155. STREET RAILROADS — Right to Lay Tracks. — A grant to a street railway authorizing it to lay its tracks and operate its road in the street is a mere license to be exercised upon the conditions named in the grant.—Blocki v. People, Ill., 77 N. E. Rep. 172.

156. TAXATION—Church Property —In the absence of express language showing such intent, taxation of property held for charitable and religious purposes will not be presumed.—Mattern v. Canevin, Pa., 63 Atl. Rep. 131.

157. TAXATION—Omitted Property.—The rules pertaining to an action to place omitted property on the tax duplicate with respect to notice and particularity of description are not applicable to a proceeding under Acts 1901, p. 109, ch. 71.—Washington Nat. Bank v. Daily, Ind., 77 N. E. Rep. 53.

158. TAXATION—Redemption from Tax Sale.—Where lands are assessed to "A," the sheriff when he receives a notice of the expiration of redemption from a tax sale, if the lands are vacant and unoccupied, may serve the notice on the unknown owners by publication.—Berg v. Van Nest, Minn., 106 N. W. Rep. 255.

159. TELEGRAPHS AND TELEPHONES — Forfeiture of Franchise.—*Quo warranto* against telephone company held to state grounds for forfeiture of license to use streets of city, though insufficient to authorize forfeiture of franchise.—People v. Chicago Telephone Co., Ill., 77 N. E. Rep. 245.

160. TENANCY IN COMMON—Adverse Possession.—The possession of one tenant in common is adverse to a cotenant where it gives notice to the co-tenant that his title is not acknowledged, and that the possession is adverse.—Waterman Hall v. Waterman, Ill., 77 N. E. Rep. 142.

161. TENANCY IN COMMON—Sale to Third Persons.—Sale of whole title by one co-tenant to a stranger, followed by adverse possession, amounts to an ouster of the other co-tenants, and limitations will begin to run against them.—Steele v. Steele, Ill., 77 N. E. Rep. 232.

162. TOWNS—Authority of Trustees.—A township cannot be bound, by estoppel or otherwise, by the acts of a township trustee beyond the scope of his limited statutory authority.—Indiana Trust Co. v. Jefferson Tp., Boone County, Ind., 77 N. E. Rep. 63.

163. TRIAL—Credibility of Witnesses.—An instruction that, if the jury are reasonably satisfied from the evidence that any witness willfully swore falsely in any material particular, the jury may disregard the testimony of such witness entirely, was proper.—Williamson Iron Co. v. McQueen, Ala., 40 So. Rep. 306.

164. VENDOR AND PURCHASER—Contract for Sale.—A written contract with a real estate broker for the sale of property does not contemplate an exchange thereof.—Lucas v. County Recorder of Cass County, Neb., 106 N.W. Rep. 217.

165. VENDOR AND PURCHASER—Refunding Money Paid. —A refunding of the money advanced by a mortgagee of a grantee, except the taxes on the land, held not required on setting aside the deed to the grantee.—Peck v. Bartelme, Ill., 77 N. E. Rep. 216.

166. WAREHOUSEMEN—Conversion.—The holder of an elevator wheat check who failed to demand a return of the wheat within six years could not maintain conversion.—Freeman v. Ingerson, Mich., 106 N. W. Rep. 278.

167. WATERS AND WATER COURSES—Flowage Rights.—Where a deed of a moiety of a tract of land included a flowage privilege, a reconveyance to the grantor extinguished the flowage right.—Forbes v. Byfield Woolen Co., Mass., 77 N. E. Rep. 51.

168. WILLS—Estoppel by Acceptance of Devise.—A devisee under a will having accepted the devise held estopped to set up any claim of his own to the land devised which would defeat any part of the will.—Cunningham v. Cunningham's Estate, Ill., 77 N. E. Rep. 95.

169. WILLS—Rights of Legatees.—Under the statute which provides for bringing advancements into hotchpot when given by an intestate to his heir, the doctrine of advancements does not apply unless the decedent dies wholly intestate.—Gilmore v. Jenkins, Iowa, 106 N. W. Rep. 193.

170. WITNESSES—Cross-Examination.—Where an accused voluntarily becomes a witness in his own behalf, he may be cross-examined concerning any matter pertinent to the issue, regardless of the extent of the direct examination —Lawrence v. State, Md., 63 Atl. Rep. 96.

171. WITNESSES — Impeachment. — Matters utterly irrelevant cannot be inquired into on cross-examination, even for the purposes of impeachment.—Schwantes v. State, Wis., 106 N. W. Rep. 287.

172. WITNESSES—Production of Documents. — Where books for which a subpœna *duces tecum* was served were large and cumbersome, it was proper for the court to require plaintiff to first examine the books to ascertain exactly what he wanted.—McDonald v. Ideal Mfg. Co., Mich., 106 N. W. Rep. 279.

173. WITNESSES—Transactions with Persons Since Deceased.—Testimony of executor to sale of cattle by himself and decedent to defendant held not to render admissible defendant's testimony as to subsequent payments to decedent on indebtedness in suit.—Telford v. Howell, Ill., 77 N. E. Rep. 82.